

STATE OF CALIFORNIA

SENATE SELECT COMMITTEE TO INVESTIGATE  
PRICE MANIPULATION OF THE WHOLESALE ENERGY MARKET

HEARING RE:       REVIEW OF COMPLIANCE WITH SUBPOENAS  
                  BY THE SACRAMENTO MUNICIPAL UTILITY DISTRICT,  
                  LOS ANGELES DEPARTMENT OF WATER & POWER,  
                  CITY OF BURBANK, AND CITY OF GLENDALE

STATE CAPITOL

ROOM 2040

SACRAMENTO, CALIFORNIA

MONDAY, MARCH 4, 2002

2:15 P.M.

Reported by:

Evelyn J. Mizak  
Shorthand Reporter

APPEARANCES

MEMBERS PRESENT

SENATOR JOSEPH DUNN, Chair  
 SENATOR WILLIAM MORROW, Vice Chair  
 SENATOR DEBRA BOWEN  
 SENATOR MAURICE JOHANNESSEN  
 SENATOR SHEILA KUEHL

MEMBERS ABSENT

SENATOR WES CHESBRO  
 SENATOR MARTHA ESCUTIA  
 SENATOR BYRON SHER

STAFF PRESENT

ALEXANDRA MONTGOMERY, Committee Consultant  
 RONDA PASCHAL, Committee Consultant  
 IRMA MORALES, Committee Assistant  
 LARRY DRIVON, Special Counsel to Committee  
 BOB PRATT, Legislative Counsel  
 DAVID DURAN, Consultant to Senator Morrow  
 SCOTT CHAVEZ, Consultant to Senator Morrow

ALSO PRESENT

JAMES TRACY, Director  
 Planning and Budget  
 Sacramento Municipal Utility District  
  
 ARLEN ORCHARD, General Counsel  
 Sacramento Municipal Utility District  
  
 KENT W. NOYES, Assistant Director  
 System Planning and Projects  
 Department of Water and Power  
 City of Los Angeles

STANTON J. SNYDER, Assistant City Attorney  
Department of Water and Power  
City of Los Angeles

ERIC J. THARP, Director  
Government, Legislative and Public Affairs  
Department of Water and Power  
City of Los Angeles

FREDRIC C. FLETCHER, Assistant General Manager  
City of Burbank  
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TERRY B. STEVENSON, Senior Assistant City Attorney  
City of Burbank

JACK DOLAN, Energy Marketer/Trader  
City of Glendale  
Water and Power

STEVEN G. LINS, Assistant City Attorney  
City of Glendale  
Water and Power

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01 P-R-O-C-E-E-D-I-N-G-S

02 -- oo0oo--

03 CHAIRMAN DUNN: Good afternoon, everybody.

04 We're going to get going here. There are a few concurrent  
05 committees that a few of us may have to sneak out to for a vote  
06 here or there, so please pardon us if we have to do that.07 I'm going to just quickly explain what the  
08 program is for this afternoon. I will not be able to stay for  
09 whole thing, unfortunately, but what we intend to do today is to  
10 review the compliance of four of the munis. They are: LADWP,  
11 SMUD, Burbank, and Glendale, if I'm not mistaken.12 This hearing is going to be primarily led by  
13 Senator Bill Morrow, since, as most of you will recall sometime  
14 ago, the leadership of examining the municipals in the wholesale  
15 electricity market is being done by Senator Bill Morrow and his  
16 staff, working with ours. But the lead role, of course, and the  
17 heavy lifting is being done all by Senator Morrow and his  
18 staff. So, he will be conducting this particular hearing.19 I want to update everybody very quickly on some  
20 of the other matters that are out there and pending. As most of  
21 you are probably aware, we had a team of staff members that were  
22 in Houston last week reviewing Enron documents. We are in the  
23 process of reviewing those documents to be discussed at a later  
24 time, a later hearing.25 We are also scheduling additional compliance  
26 hearings with respect to the other market participants, although  
27 we've done most of them. We still have some follow-up that was  
28 not satisfy with respect to most of them. Again, we'll keep

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01 everybody posted.

02 Depositions are also being scheduled. For those  
03 of you who are not aware, we have, and I believe it is still on  
04 target for Wednesday, Anjali Sheffrin's deposition. Most of  
05 you recall, Anjali Sheffrin is from the ISO's Department of  
06 Market Analysis. Her deposition will be on Wednesday. That  
07 deposition is open to the public unless we receive a request  
08 from Ms. Sheffrin, or legal counsel for ISO, or Ms. Sheffrin, to  
09 close it to it public. As of yet we have not received any such  
10 request.11 As usual, as future depositions are scheduled,  
12 everyone will be advised, and advised whether they are open or  
13 closed to the public.14 So, without anything further, let me turn over  
15 this hearing to Senator Bill Morrow. Bill.

16 SENATOR MORROW: Thank you, Senator Dunn.

17 I can't help, but I'm a little nostalgic. It  
18 kind of reminds me of the good old days in the State Assembly,  
19 1996; I actually get to chair a hearing for awhile.20 Thank you, ladies and gentlemen, for being here  
21 today. Today's hearing will focus on a limited number of  
22 document items for a limited number of municipal utilities.  
23 Frankly, to discuss all 70-plus items in a day for all eleven  
24 subpoenaed municipal districts, that would keep the Committee  
25 here not only all night but into election day tomorrow, and I  
26 can assure you, I'm not going to let that happen.27 As Senator Dunn indicated, we have asked four  
28 municipal utilities to be here today, namely: Sacramento

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01 Municipal Utility District, affectionately known as SMUD; the  
02 Los Angeles Department of Water and Power; the City of Burbank  
03 Water and Power; as well as the City of Glendale Water and  
04 Power.

05 Now, there's a mix of reasons why we're



particularly concerned about compliance issues relating to these four munis. All four of them sold power to the state at levels comparable to or above power sold by the private generators. Both SMUD and LADWP are the largest municipals in the state, and their operations are therefore more complex and sophisticated than the others.

We believe that the give-and-take of this hearing will be helpful in determining the degree of compliance or lack thereof.

Burbank and Glendale, it should be noted, are somewhat unique from the others in that each have made arrangements with private entities to handle some of their energy sales at the wholesale levels, thereby creating some complications in terms of document production that we hope to work out at this hearing today.

Out of the initial document subpoena, we've come up with a list of 20 priority items upon which the Committee staff has focused a majority of its review efforts to date. Our priority 20 list contains items that, at least at this point in our investigation, we believe, hold documents that are of the greatest importance to us and provide the best direction for understanding and evaluating responsive documents.

Now, that's not to say that we're letting anyone off the hook for the other items, or that we've determined that everyone has fully complied with the nonpriority 20 questions. The Committee, of course, reserves the right to resolve any outstanding compliance issues at a later date.

For each of these municipal districts, we will focus most of our attention on those priority 20 items where, in our judgment, document production has been the least satisfactory, and where correspondence between the Committee and these districts have not been able to fully resolve our concerns.

Of course, at times we may stray briefly into other unresolved compliance issues that are important to us as well.

What I would like to do is begin with the Sacramento Municipal Utility District. For those persons, perhaps you could come forward, the witnesses that I understand would testify, answer questions in response.

As these gentlemen are moving forward, let me give everyone a brief overview of SMUD's compliance to date. In response to the Committee's subpoena, SMUD has established a document repository in their Sacramento headquarters. To date, they have produced to their repository approximately 325,000 pages of hard copy documents; several gigabytes of electronic information on 27 CD ROMs. They've also provided 66 audio reels of energy traders conducting trading activities.

SMUD has also provided the Committee with a ten-page list of documents for which it has asserted a privileged claim and has been withheld during document

production.

I will say that in terms of raw quantity, there is no question that SMUD has been the most cooperative thus far in responding to the Committee's subpoena. However, in our review of the SMUD's responsive documents, we have found some curious gaps of information that we believe warrant fuller explanation.

Though SMUD has produced mountains of contracts, and invoices, and raw data, noticeably absent or severely lacking from those documents are some of the documents that we are most interested in seeing, including agendas, minutes,

and/or notes from internal executive meetings of the same, from power trading strategy meetings and risk management group meetings.

Also missing, formal and informal guidelines, policies, and procedures; communications regarding development of formal and informal guidelines, policies, and procedures, including e-mails, internal memos, and handwritten notes; communications regarding market strategies, including e-mails, internal memos, and handwritten notes, as directives and/or decisions as communicated by higher eschelons in management and/or executive committees.

Here with us today, at least I do recognize one gentleman, Mr. Arlen Orchard. This is Mr. Tracy?

MR. ORCHARD: Yes, it is.

SENATOR MORROW: I understand Mr. Tracy is the Director of Business and Planning. I'll let you gentlemen introduce yourselves here in a moment.

If you would, what we're doing, we're asking those witnesses who plan to answer questions and give factual testimony in response to our questions to please stand, rise, and be sworn.

[Thereupon the witnesses, JAMES TRACY and ARLEN ORCHARD, swore to tell the truth, the whole truth, and nothing but the truth.]

SENATOR MORROW: Gentlemen, let me allow you to introduce yourselves first as far as your position, briefly.

MR. ORCHARD: Thank you, Senator Morrow, Members of the Committee. My name is Arlen Orchard. I'm the General Counsel for the Sacramento Municipal Utility District.

To my right is James Tracy, who is, as you noted, the Director of Business -- Budget and Business Planning for the District.

SENATOR MORROW: Thank you, gentlemen.

Gentlemen, before we delve into SMUD's responsiveness to our priority 20 items, there are a few miscellaneous issues that I'd like to dispense with first.

First of all, in your repository, you provided 66 audio reels of SMUD energy traders purchasing and selling power. It's my understanding that each physical reel contains one day's worth, or twenty-four hours, of real-time recording. So, in essence, I believe, I just want to verify this, what we have would be 66 days of recordings.

Is that an accurate --

MR. ORCHARD: That's my understanding, sir.

SENATOR MORROW: Okay, that is accurate.

That being the case, one thing that we don't have, as I understand it, and I've looked at some of those reels, the way that they are identified, for instance, the numbers would be, for instance, 18, and that would indicate the day of a particular month, but there's no way to know what month -- we just know it's the 18th -- or year.

Now, that's fine. When we plug these things in, automatically we can find that out. What I'm trying to get from you, maybe you can just give us a short answer.

On the 66 days that we have, are those 66 days concurrently?

MR. ORCHARD: I'm not sure. I believe they are; however, I'm not sure. Particularly in maintaining its audio tapes, those tapes are used for the purpose of, if there's a dispute on a transaction, to going back and checking the

18 conversation versus -- to verify the parties' understanding of  
19 the transaction.

20 We haven't typically saved those tapes for more  
21 than a 90-day period in general, because normally those  
22 transactions are very short, and you have the invoices shortly  
23 thereafter. And at any time -- around that time, any dispute  
24 would be resolved.

25 SENATOR MORROW: Those tapes, by the way, have  
26 been very helpful. Not that we listened to every single one of  
27 them, but sometimes an issue comes up as to a transaction on a  
28 particular date, and we'd like to be able to go to a certain

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01 date if we have audio available to verify or to look for more  
02 information on that.

03 I guess what I'm trying to get at is, we have 66  
04 days' worth of audio tapes. I'm not quite sure, other than to  
05 say that you believe there's 66 days concurrently. I do know I  
06 listened to some January 2001 tapes.

07 Are there tapes before that, say, before 2001 and  
08 after? That's what I'm trying to get.

09 MR. ORCHARD: I think we've produced all the  
10 tapes we do have.

11 There was a change in policy essentially where we  
12 had saved them for a long time, and then we started re-using the  
13 tapes because we were finding that, one, we were having a  
14 storage problem, and two, there was no benefit to retaining  
15 them.

16 So, I believe we've produced all that we do have.

17 SENATOR MORROW: When was the change of policy?

18 MR. ORCHARD: Mr. Tracy reminded me, we don't  
19 have that date for you. I believe it was sometime in the mid or  
20 early 2001, but we would need to get back to you with a date,  
21 and we can do that.

22 SENATOR MORROW: That would be a change of policy  
23 in what respect?

24 MR. ORCHARD: One would be that we weren't saving  
25 the tapes for a long period of time, and I think that actually  
26 at one point, we planned to use a different recording strategy.  
27 I think we were talking about trying to do some sort of a CD,  
28 where that would be rolled, because it's more efficient than the

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01 tapes. But we've had -- I think we've had problems technically  
02 trying to -- we're continuing to work through, trying to  
03 actually be able to maintain those CDs.

04 SENATOR MORROW: The tapes we have now are the  
05 big audio reels.

06 MR. ORCHARD: Right, and I think we were trying  
07 to move towards a CD recording system, but we've had some  
08 technical difficulties with doing that, so we haven't  
09 successfully done that yet.

10 SENATOR MORROW: So are you still using the big  
11 audio reels?

12 MR. ORCHARD: No, we're having a hit and miss  
13 with CDs, and mostly miss.

14 SENATOR MORROW: That's what we're trying to get  
15 information in terms of what tapes are available?

16 MR. ORCHARD: And again, the CD tapes were  
17 essentially just to be kept for 30, 60, 90 days, and then those  
18 would be re-recorded.

19 SENATOR MORROW: Is that an actual retention  
20 policy, then, of SMUD?

21 MR. ORCHARD: I don't know. I doubt if we had  
22 anything in writing on that policy, but that was the shift  
23 towards that, because as I indicated, they found no purpose in

24 saving them longer than that because, again, these were very  
 25 short-term transactions.  
 26 SENATOR MORROW: Do you have any backup systems?  
 27 For instance, if a question arose concerning a particular  
 28 transaction on the date previous to these 66 days, how would  
 0010  
 01 SMUD go about ascertaining factually what was said during that  
 02 transaction?  
 03 MR. ORCHARD: For many of the transactions there  
 04 would also be a confirmation sent out, transaction confirmation  
 05 sent out a few days later, depending on the transaction. So  
 06 that would be typically the record that you would rely on for  
 07 verification of whatever the transaction was.  
 08 SENATOR MORROW: As far as the confirmation,  
 09 would that just be a confirmation of the results of what  
 10 happened, or would it entail any substance discussions?  
 11 MR. ORCHARD: No, essentially what it would do,  
 12 it would be listing the commercial terms of the deal. It would  
 13 indicate the amount of power, when it was to be delivered, the  
 14 start date, the end date, the price, the delivery point.  
 15 SENATOR MORROW: Have those confirmations been  
 16 produced to the Committee?  
 17 MR. ORCHARD: Yes, they have. They're part of  
 18 the contract section, because they actually are contracts.  
 19 SENATOR MORROW: Mr. Drivon.  
 20 MR. DRIVON: There is currently and has been for  
 21 some time a subpoena which obviously would cover those  
 22 recordings.  
 23 Are you telling us that there is a retention  
 24 policy which allows those recordings to be destroyed? I mean  
 25 the ones that are being done, say, within the last 60 days or 90  
 26 days?  
 27 MR. ORCHARD: I'm not sure. I know that we have  
 28 not altered anything before the date of the subpoena.  
 0011  
 01 MR. DRIVON: The subpoena is, you know, ongoing.  
 02 I would assume that you are now retaining.  
 03 MR. ORCHARD: As I indicated, we're retaining  
 04 those documents. But as I indicated, we have had little success  
 05 in actually making recordings of the transactions we're  
 06 currently doing because we tried to do a technology shift that  
 07 has been less than successful at this point.  
 08 MR. DRIVON: But to the extent that you are  
 09 successful in capturing those data --  
 10 MR. ORCHARD: We continue to have that.  
 11 MR. DRIVON: It's all being maintained, so there  
 12 is no destruction policy or retention policy, other than you  
 13 keep it all?  
 14 MR. ORCHARD: I believe that's correct.  
 15 SENATOR MORROW: Mr. Johannessen.  
 16 SENATOR JOHANNESSEN: Let me make sure I  
 17 understand that.  
 18 Are you telling the Committee that in the  
 19 negotiations, and I'm assuming you're indicating that after the  
 20 subpoenas were given, the negotiations that happened after that,  
 21 you have been unable to record in some way the negotiations?  
 22 MR. ORCHARD: I'm indicating that we did change  
 23 our process of recording those, and our technological -- we've  
 24 been having technological difficulties, yes.  
 25 However, those transactions are reduced to  
 26 writing.  
 27 The purpose of the recording is simply a second  
 28 check if there is a dispute over what the terms of the written  
 0012

01 deal looked like when a confirmation is sent out.

02 So, it is not the primary purpose of those  
03 recordings to serve as a record of the transaction. The primary  
04 record of the transaction is the written record of the  
05 transaction.

06 SENATOR JOHANNESSEN: No, I understand that, but  
07 you will forgive me if I tell that I find it hard to believe  
08 that an organization such as yours cannot technologically do  
09 that.

10 SENATOR MORROW: Thank you, Senator Johannessen.  
11 Before we move off the subject, I think I heard  
12 you say that you roll over the tapes every 90 days.

13 MR. ORCHARD: I believe that was the policy, 60  
14 to 90 days, I'm not sure which.

15 SENATOR MORROW: If that were the case, you would  
16 have -- oh, 60 to 90 days.

17 MR. ORCHARD: Yeah, I'm not sure which of the  
18 days.

19 SENATOR MORROW: It must be more than 60 days,  
20 because you have 66 days' worth of tape.

21 MR. ORCHARD: And I imagine they're not -- it's a  
22 rolling -- it's a rolling process. There may be days that one  
23 is not rolled or something, but it's an approximate.

24 SENATOR MORROW: If it's 90 days, you would think  
25 we would have 90 tapes produced as opposed to the 66.

26 MR. ORCHARD: I would presume it's closer to the  
27 60.

28 SENATOR MORROW: I would appreciate if SMUD would

0013 go back and verify, and to elucidate some more answers on this  
02 issue.

03 MR. ORCHARD: I will check, sir.

04 SENATOR MORROW: Thank you.

05 Mr. Drivon.

06 MR. DRIVON: Can we get a list, please, of the  
07 line numbers for which recordings are made?

08 MR. ORCHARD: Yes.

09 MR. DRIVON: And the other thing is, do you have  
10 any objection, does SMUD have any objection to signing a  
11 non-destruct agreement with the Committee?

12 MR. ORCHARD: No, we do not.

13 MR. DRIVON: Thank you.

14 SENATOR MORROW: Thank you, Mr. Orchard.

15 Let me move on to another area. In your  
16 repository, SMUD provided one CD ROM containing, to be exact, I  
17 think 155 e-mails that were received by Mr. Steve Sorey with  
18 your company, who, I understand, is the Supervisor for SMUD's  
19 Energy Trading Group.

20 In my letter of February 21st, 2002, I inquired  
21 as to the whereabouts of responsive e-mails received by other  
22 named employees who have duties relating to SMUD's energy  
23 trading, risk management, or executive level management.

24 Your response in your letter of February 27th was  
25 essentially that SMUD does not have a policy regarding e-mail  
26 archival, and that most employees delete their sent e-mails  
27 after a short period of time.

28 First of all, did I accurately describe your

0014 response?

01 MR. ORCHARD: Yes, sir. We do not have a formal  
02 policy directing employees to retain e-mails for any length of  
03 period, nor do we have a policy directing them to send e-mails  
04 to any central repository. So, it's left to the individual  
05 employee to decide what to do with those things.

07 SENATOR MORROW: Let me back up. First of all,  
08 how would your employees reference directives, instructions,  
09 guidelines that they received via e-mails if they don't save  
10 them?

11 MR. ORCHARD: Many, for example, many of  
12 Mr. Sorey's e-mails are confirmations of directives that he  
13 received from management, and they're confirmations of those  
14 directives. Otherwise, many of the directives would be,  
15 depending on the directive, would be simply communicated orally  
16 from one supervisor to another in the chain of command.

17 SENATOR MORROW: We've received e-mails from  
18 Mr. Sorey. I mean, I don't know how many employees SMUD has  
19 that would deal with e-mails of the nature that we're looking  
20 for.

21 Is he the exception to the rule of employees in  
22 maintaining all these e-mails?

23 MR. ORCHARD: I can't speak to that. I know that  
24 we have communicated a request with regard to e-mails to all  
25 members of the Trading Group, all members of executive  
26 management, all members dealing with risk management of the  
27 issue, all members for generation services, and to the Corporate  
28 Files Department.

0015 SENATOR MORROW: In doing that, I want to ask you  
01 in terms of how you're trying to comply with these requests in  
02 that regard.

03 Did you ask those persons, then, to print out any  
04 responsive e-mail that they had or would be saved?

05 MR. ORCHARD: Yes. Actually, initially we had a  
06 -- when we first received the subpoena, held a meeting with more  
07 than 20 employees from the various affected departments and  
08 instructed them to gather all documents, to search their  
09 personal files, to search their e-mails, and then, with regard  
10 to their e-mails, to either print those out and deliver them  
11 Or alternatively to, if they had large numbers, they had the  
12 option, as with many of the documents related to the Planning  
13 Department, to have those placed on a CD.

14 SENATOR MORROW: I know that there are Members of  
15 this Committee who have accused me of being a technological  
16 dinosaur. And it may surprise them, and it may surprise you  
17 that I know that there are mail programs, computer mail  
18 programs, one of them is Microsoft Outlook, that allow e-mails  
19 to be recovered even after they've emptied from the delete  
20 file. In other words, it goes to a, for lack of a better word,  
21 electronic dippy-dumpster which itself can be retrieved.

22 I don't know what programs that you may have  
23 employed in SMUD, but did you ascertain whether or not if you  
24 have such a program where those types of e-mails that may have  
25 been deleted from the file could be retrieved in central  
26 repository, if you will?

27 MR. ORCHARD: Senator, like you, I am a  
28

0016 technological dinosaur. I hate to admit it.

01 SENATOR MORROW: I said I was accused.

02 MR. ORCHARD: All right, you aren't agreeing, all  
03 right.

04 SENATOR MORROW: I didn't admit it.

05 MR. ORCHARD: I'll 'fess up; I'll admit to that.  
06 We do use Microsoft Outlook. And I understand  
07 that there are forensic technologies available to go back and  
08 ascertain those.

09 However, we have instituted an overlay  
10 technology, from my limited understanding, which actually goes  
11 in and absolutely destroys it. At least, that's according to  
12

13 our technology -- our chief technology officer.  
14 SENATOR MORROW: So you've inquired with your IT  
15 people --  
16 MR. ORCHARD: Yes.  
17 SENATOR MORROW: -- that as to that aspect,  
18 there's absolutely no depository?  
19 MR. ORCHARD: My understanding is, we have  
20 implemented software that does destroy completely all records of  
21 e-mails once they're deleted.  
22 SENATOR MORROW: When was that software employed?  
23 MR. ORCHARD: I think it was, if I recall, early  
24 or mid May, something like that, of 2001, I seem to recall.  
25 SENATOR MORROW: May of 2001?  
26 MR. ORCHARD: I believe sometime -- and I can  
27 certainly check as to those dates.  
28 SENATOR MORROW: If you could, I would appreciate  
0017 a verify on that.  
02 Mr. Drivon.  
03 MR. DRIVON: What operating system does SMUD use  
04 with respect to its servers that deal with e-mails?  
05 MR. ORCHARD: As I said, as far as my limited  
06 knowledge is, we're on Microsoft Outlook. Beyond that, I have  
07 no other understanding of what our product is.  
08 MR. DRIVON: Do you know whether or not you use  
09 NT, or NT back office or exchange server?  
10 MR. ORCHARD: I have no knowledge about that.  
11 MR. DRIVON: Do you have anybody with you here  
12 today that could answer that question?  
13 MR. ORCHARD: I do not have anybody from our IT  
14 Department with us.  
15 MR. DRIVON: Would you have any objection if your  
16 IT -- and I know this sounds a little trite, maybe -- but if  
17 your IT people got together with our IT people, to try to figure  
18 out whether retrieval of those archives is possible?  
19 MR. ORCHARD: Subject to presence of counsel, I  
20 don't have an objection.  
21 MR. DRIVON: All right. Can you provide staff  
22 with and identify the operating systems that are used with  
23 respect to that, please?  
24 MR. ORCHARD: Yes, I will.  
25 MR. DRIVON: Thank you.  
26 SENATOR MORROW: Any other questions on this?  
27 Senator Kuehl.  
28 SENATOR KUEHL: It got very busy in 2001.  
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01 MR. ORCHARD: Yes, it did, very busy.  
02 SENATOR KUEHL: Because first we hear that there  
03 was a decision, or maybe a decision, to change technology and we  
04 began reusing tapes.  
05 And now we hear we have an overlay program that  
06 really, really gets rid of e-mails, and all of them were  
07 instituted in early 2001.  
08 MR. ORCHARD: Or sometime in 2001; that's  
09 correct.  
10 SENATOR KUEHL: How long had the technology in  
11 each case been utilized before early 2001?  
12 MR. ORCHARD: I don't have any information on how  
13 long we've recorded. I know that --  
14 SENATOR KUEHL: Do you think it'd be more than a  
15 year?  
16 MR. ORCHARD: I would say it was more than a  
17 year. I know that some --  
18 SENATOR KUEHL: Two years?

MR. ORCHARD: I don't have any information, Senator, on that. I can certainly get back to the Committee with that information, however.

SENATOR KUEHL: Was there some incident that might have led to the corporate decision to do the overlay program on e-mails, so they could really, really, really, really be erased?

MR. ORCHARD: I don't -- I basically don't know the purpose. Perhaps Mr. Tracy -- neither one of us are in the technology area.

It is a management decision, but as I say, I don't -- we do have a member of executive management who is part of our IT, but the purpose of, I don't know.

SENATOR KUEHL: Thank you, Senator Morrow.

SENATOR MORROW: Senator Johannessen.

SENATOR JOHANNESSEN: I need to clarify in my own mind.

I'm assuming that you gentlemen that sit before us here have the knowledge, or should at least have the knowledge to be able to clarify the questions that we're asking. It doesn't seem like they do that.

Who in that organization can give us these kind of answers?

MR. ORCHARD: Well, Senator, it's going to depend on the question, quite frankly. There was a very large breadth of the subpoena. We involved multiple departments. Depending on what the question is, and what the topic is, it might be different people with regard to specifics.

Generally as to compliance in general, I am probably the person best situated to speak to compliance in general.

I asked Mr. Tracy to accompany me on the basis that I anticipated that many of the questions would deal with our risk management policies. I, quite frankly, did not anticipate questions related to our e-mail system. So, I apologize for that, but I did not.

SENATOR JOHANNESSEN: Well, based on the subpoena that was given, wouldn't someone in your organization get the

hint of what we're trying to dig for and trying to find, and that you're going to have to be able to answer some of these questions?

I'm surprised that an organization like yours wouldn't have already thought about all these things.

MR. ORCHARD: Senator, I believe we've provided the Committee with as complete answers as possible to the questions that have been both written questions and otherwise.

Many of the questions related specifically to types of trading documents that weren't provided. That was the bulk of the questions that Senator Morrow requested, and that is why I had Mr. Tracy here.

SENATOR JOHANNESSEN: And Mr. Tracy, then, can able to answer questions regarding the trading documents?

MR. ORCHARD: He is likely to be able to answer questions regarding risk management and generally our policies from an executive standpoint, yes.

If you are looking for answers to specific questions, as in this document says what, no, he is not that person. That would be perhaps, you know, a staff of several.

Again, I apologize, but my understanding of the purpose of this was to generally discuss compliance, of the meeting today, and not to delve into specific documents.

SENATOR MORROW: Thank you, Senator Johannessen.



On the issue of compliance, and granted we're going to move on to the priority list here in a moment, and I want to touch upon some miscellaneous items, and this falls within that.

But the Committee, of course, has requested in its subpoena information concerning SMUD's retention policies and archival policies. At least in conferring with my staff here, what we've learned here today about instituting a policy where you have an overlay software program that destroys e-mail after May, 2001 is a revelation to us. To our knowledge, that wasn't produced pursuant to our subpoena.

Such information, I believe, would be responsive.

MR. ORCHARD: If you could point me to a question, Senator, I would look to that.

We were asked regarding -- we were asked regarding our retention policy, and we do not have a formal retention policy. I did respond to that.

And I did indicate that our general document retention policy is governed by the FERC regulations, and I provided the Committee with a copy of all of those FERC regulations.

But, you know, many, many documents regarding e-mail, as I indicated, it's left to the employee to decide.

SENATOR MORROW: I do understand that.

But if you employ this particular software program, that it goes into the general bin even after the file is deleted, and then you employ an overlay program that destroys that, I mean, that was a company decision to make.

I guess I would assume that -- well, I don't know. I don't want to assume anything -- whether or not you knew that would be the result of that.

I know that the Committee would be very much interested in receiving information in the form of e-mails, memorandums, or any documents that would shed some light as to why SMUD employed or had this change in using software.

MR. ORCHARD: I will provide the Committee with a written answer to that request.

SENATOR MORROW: Thank you.

Mr. Drivon.

MR. DRIVON: I would assume that since the date the subpoena was issued here, that the use of the overriding overlay program with respect to e-mails has been suspended?

MR. ORCHARD: I cannot comment on that, sir.

MR. DRIVON: Let me ask you, as of today, can you assure the Committee that going forward, no additional e-mails or other electronically stored data will be destroyed or over-written?

MR. ORCHARD: I will have to go back and talk to our IT people. I don't know what kind of a job it is to discontinue. I don't know how integrated it is into our software. I don't know if we need to go out and hire people to come in and do that. I just don't have that information.

What I can do is go back and direct that any e-mail remotely responsive to anything in the category will be printed and saved.

MR. DRIVON: That would be helpful but not satisfactory, because that -- I mean, I know you need to go back and talk to your IT people, and we appreciate you doing that.

But for us to just accept that you're going to

ask them to save what they feel is responsive and allow the rest

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02 of it to be deleted, over-written, or destroyed, then puts you  
03 in a position of determining what may and may not be relevant,  
04 and there could be, as I think you can see, a conflict there.  
05 So, it would be helpful, I think, if you would  
06 make an attempt to determine how big a job it would be to  
07 discontinue the automatic application of the overriding  
08 software.

09 MR. ORCHARD: I will do so. I just can't give you  
10 an answer as to how long it will take.

11 MR. DRIVON: And you can get back to staff on  
12 that?

13 MR. ORCHARD: Yes, I will respond in writing to  
14 all of the questions.

15 SENATOR MORROW: Thank you.  
16 Senator Dunn.

17 CHAIRMAN DUNN: Thank you, Senator Morrow.  
18 My apologies that I was gone at a Transportation  
19 Committee hearing, and I don't want to repeat old ground.

20 My understanding is that you implemented a  
21 program that automatically destroys e-mails?

22 MR. ORCHARD: Yes, that is correct. That's my  
23 understanding.

24 CHAIRMAN DUNN: Again, I'm sure this was covered.  
25 What's the frequency? If I was in your shop and did an e-mail  
26 today, when is that going to be automatically destroyed pursuant  
27 to that program?

28 MR. ORCHARD: I think that it's about -- my

0024 01 understanding, its a batch process that's done every so often.  
02 I think it's every couple of weeks, or something like that.

03 CHAIRMAN DUNN: Here's my concern about that,  
04 that I think has been expressed here, but I want to underscore  
05 it. And that is, I understand your representations of a  
06 computer program, and it happens automatically.

07 SMUD is under a subpoena. The mere fact that you  
08 have a computer program does not negate your legal  
09 responsibility under that subpoena.

10 And so, I would really, as Chair of this  
11 Committee, prefer not to go down the same route we had to with  
12 Enron and the destruction of documents, but if we have to, we  
13 will.

14 I want to emphasize to you, I'm less concerned  
15 about the administrative hassles associated with discontinuing  
16 the program.

17 Please understand, you are under a subpoena. And  
18 bear that in mind, because if we find that documents were  
19 destroyed that were covered by the subpoena, but destroyed  
20 pursuant to an automatic operation of a computer program, that  
21 will not negate us going after contempt and any other remedies  
22 available to us, including, as you know -- I'm sure you, if not  
23 watched, read what we did at the last compliance hearing related  
24 to Enron -- that it constitutes a criminal act in California to  
25 destroy documents that are under subpoena.

26 So please bear that in mind.

27 MR. ORCHARD: As I indicated, Senator, as an  
28 interim measure, we will direct all employees to ensure that

0025 01 they continue to print any e-mails related to information --  
02 CHAIRMAN DUNN: I appreciate that.

03 What I'm referring to is the time period from  
04 when you were served with the subpoena to today. And I'm  
05 crossing my fingers and hoping there weren't documents destroyed  
06 in that time period, or we're going to have to take appropriate  
07 action.

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08 MR. ORCHARD: Yes, sir. We'll check.

09 SENATOR MORROW: With that admonition, let me  
10 move on to the first item on the priority list. If I can refer  
11 to it, you have some documents with the subpoena request,  
12 document Item 46.

13 For the benefit of everyone here, Item 46  
14 requests copies of all minutes of meetings relating to risk  
15 management of your trading activities and positions, both  
16 financial and physical, in the California markets for  
17 electricity and ancillary services in the California natural gas  
18 market.

19 SMUD, it's my understanding, has provided only  
20 five electronic documents on this, none of which are minutes, at  
21 least in the traditional sense of the word.

22 I understand that in SMUD, you have a committee  
23 or a task force, I think it's referred to in both ways, a Market  
24 Monitoring Committee; is that correct?

25 MR. ORCHARD: Market Monitoring Task Force, yes.

26 SENATOR MORROW: Is that different? I have seen  
27 in some of SMUD's documents, the reference between Market and  
28 Monitoring Committee.

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01 MR. ORCHARD: They're probably synonymous.

02 SENATOR MORROW: That being the case, explain to  
03 us in general terms what the purpose and what the function of  
04 that committee or task force was?

05 MR. ORCHARD: Yes. The task force was started in  
06 late January of 2001, essentially to respond to the  
07 uncertainties of the market. We were in full crisis mode at  
08 that point. We were facing a 22 percent rate increase, although  
09 I don't think we identified it quite as much as that at that  
10 points. Prices were crazy. We felt that there was a need to be  
11 able to respond to market conditions quickly.

12 SMUD, as you know, is a net buyer of electricity,  
13 so we were buying large amounts of electricity out in the market  
14 to provide our customers with. And we wanted a committee formed  
15 that would be able to respond quickly and decisively to changing  
16 conditions with regard to how we would purchase -- primarily how  
17 we would purchase energy in the market; how we would move more  
18 towards long-term market, or long-term contracts; how those  
19 contracts would be divided; what appropriate lengths of time  
20 would be.

21 We also have, as you may or may not know, some  
22 gas-fired generation that is local. That generation is used  
23 primarily during that part of time almost exclusively to supply  
24 our native load. Gas prices were also heading upward at that  
25 time, and we needed to institute a policy, or to be able to make  
26 short-term decisions regarding gas purchases.

27 In addition, because the products that you buy in  
28 the market are ill-suited to -- essentially you have a choice

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01 when you're buying energy products, to purchase either what's  
02 called 6 by 16 products, or 24 by 7 products, and those refer to  
03 the hours and the number of days during the week.

04 If you're buying for your peak, you tend to have  
05 shoulder periods where you have some little excess hour, so we  
06 were trying to figure out how to sell that power also, and who  
07 to sell that to.

08 The other purpose of the committee was to discuss  
09 litigation strategies regarding FERC litigation, strategies  
10 related to -- litigation strategies regarding nonpayment to the  
11 ISO and PX by various market participants, credit concerns that  
12 the state was facing.

13 As you may know, at one point we sleeved a deal

14 for the State of California, because a seller would not sell to  
15 the state, and so we lent our credit to the state. Those types  
16 of decisions.

17 Later on, with the PG&E bankruptcy, and the PX  
18 bankruptcy, it was -- the task force was also -- also dealt with  
19 issue related to both litigation strategies and how to deal with  
20 the uncertainties related to two rather large bankruptcies.

21 SENATOR MORROW: This particular committee or  
22 task force, they would typically make decisions dealing with  
23 energy trading issues and options?

24 MR. ORCHARD: Yes.

25 SENATOR MORROW: As well as risk management  
26 options?

27 MR. ORCHARD: Yes.

28 MR. TRACY: I would qualify that a little bit, in

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01 that the committee was meeting to look at where we had either a  
02 significant surplus or a significant deficit facing us.

03 It was not setting the day-to-day trading. That  
04 was still done by the trading group within the parameters to  
05 meet our load.

06 SENATOR MORROW: Just to clarify, I think also  
07 you had two other groups, one being the Energy Risk Management  
08 Group; is that right?

09 MR. TRACY: Yes.

10 SENATOR MORROW: And also an Energy Trading  
11 Group.

12 Would the committee that we're talking about, the  
13 Market Monitoring Task Force, would that have oversight  
14 basically over those two groups?

15 MR. TRACY: That would have over -- basically it  
16 had oversight over the whole commodity purchase and management.

17 SENATOR MORROW: And that would include --

18 MR. TRACY: Both of those.

19 SENATOR MORROW: -- the Energy Risk Management  
20 Group and the Energy Trading Group?

21 MR. TRACY: It would include both of those and  
22 the supervisor in charge of each of those groups.

23 I'm in charge of the Risk Management Group, and  
24 the supervisor in charge of the Trading Group were members of  
25 that committee where the decision making was made.

26 SENATOR MORROW: Now, the Market Monitoring Task  
27 Force, you say it was brought into effect in January of 2001.

28 Since then, how often did it or does it meet?

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01 MR. TRACY: We are generally meeting once a week.

02 SENATOR MORROW: On a weekly basis? Does that  
03 committee still exist, the task force?

04 MR. TRACY: Yes.

05 SENATOR MORROW: Prior to January of 2001, do you  
06 have a comparable committee, organization, group, task force,  
07 whatever you might call it, that would have oversight authority  
08 for trading decisions or for risk management?

09 MR. TRACY: Generally the structure was  
10 different. I took over the risk management about six months  
11 into 2000. And basically, one of my tasks was to separate the  
12 risk management from the front office trading group so that the  
13 decisions that are made on how we manage our overall power  
14 supply was separated from the folks that were actually executing  
15 those decisions. And that was evolving through the fall of  
16 2000. And really, I would say that the energy crisis  
17 accelerated the need to get that finished.

18 So, prior to this, basically the first of 2001,  
19 those decisions were all being made by the Energy Trading Group

20 essentially.  
 21 SENATOR MORROW: Take the Energy Trading Group  
 22 before 2001, then. How often did they meet?  
 23 MR. TRACY: Those folks on the trading floor, if  
 24 you want to call it meeting, they're together all the time. So,  
 25 that's a situation where you have a group of individuals who are  
 26 meeting every day. They're on the phone, doing their  
 27 transactions.  
 28 SENATOR MORROW: Was there any formal scheduled  
 0030 meetings on top of or in addition to when they get together on  
 01 the floor?  
 02 MR. ORCHARD: We'd have to ask them. We don't --  
 03 we don't think so, other than normal day-to-day talking to the  
 04 person next to you. But I don't think there were formal  
 05 meetings of that group of employees.  
 06 SENATOR MORROW: Were there meetings -- I'm  
 07 sorry, you wanted to respond more.  
 08 MR. TRACY: Yeah. They may have had what I'd  
 09 call a staff meeting, much like a departmental meeting.  
 10 SENATOR MORROW: Were there as a result, previous  
 11 to 2001, at least, January 2001, were there any documents  
 12 generated in terms whether it be memos, minutes, or anything  
 13 else that would document the decisions or items discussed by  
 14 this energy group?  
 15 MR. ORCHARD: I don't believe so. To the extent  
 16 there are, I think we've produced them.  
 17 Many of the documents that you have that are in  
 18 the repository are the outcome of those meetings. Many of  
 19 Mr. Sorey's documents, or Mr. Ingwers' documents are the result  
 20 of those meetings, though they aren't -- you know, necessarily  
 21 it won't say, "The Energy Trading Group agreed today that we  
 22 would do X, Y, and Z." It would simply say, "Here are the  
 23 parameters for trading today."  
 24 That's true also with regard to the Market Task  
 25 Force, in that we did not keep minutes. We had decisions, and  
 26 since you had the two managers in charge of those areas, they  
 27 then took the direction and took it back to their employees to  
 0031 implement.  
 01 So, you'd probably find a large number of  
 02 documents that would not be identified specifically by those  
 03 names, but they were the result of those meetings.  
 04 SENATOR MORROW: Okay.  
 05 Senator Dunn.  
 06 CHAIRMAN DUNN: While you're pausing to reflect  
 07 there, just a quick question.  
 08 Mr. Tracy, I don't know if you would be the one,  
 09 or Arlen, if you're the correct one here.  
 10 The Market Monitoring Task Force, which I believe  
 11 you stated was created in early 2001, January of 2001,  
 12 approximately how many members?  
 13 MR. ORCHARD: I can list the members for you.  
 14 CHAIRMAN DUNN: Please.  
 15 MR. ORCHARD: I'm a member. Mr. Tracy's a  
 16 member. Tom Ingwers, who is our Director of Trading, Energy  
 17 Trading and Contracts, is a member. Jim Shetler, Assistant  
 18 General Manager for Energy Supply, is a member. And Doug  
 19 Calvert, who is our Systems Operations Manager, essentially  
 20 keeping the lights on, is also a member of that task force.  
 21 CHAIRMAN DUNN: Are any of those individuals  
 22 economists by training?  
 23 MR. TRACY: I am.  
 24 CHAIRMAN DUNN: Jim, you're the only one?  
 25

MR. TRACY: That I know of. I don't think any of the others would claim to be economists.

CHAIRMAN DUNN: The reason I asked that question

is because, obviously with most market monitoring committees, it's primarily an economist's task to keep an eye on market behavior, which I assume was at least part of what the task force was all about. Is that fair?

MR. TRACY: One of the issues that we had to struggle with was where the prices were going to be, not only in the first quarter, but for the remainder of the year. So, we were concerned about what was pushing the market, and what the driving it.

CHAIRMAN DUNN: And again, because I know this is a compliance hearing, as already cautioned by Senator Morrow, I'm not going to delve into it.

But I'm assuming, then, that there was at least some examination by this task force as to the causes of the high prices in the wholesale electricity market; is that correct? Is my assumption correct?

MR. TRACY: We may have talked about that, but the primary issues that we covered in that task force was making sure that we could fit a commodity budget in within the rate increase that we were recommending to the board.

CHAIRMAN DUNN: Jim, let me go to you very specifically. I'm not asking what it is. This is just basically a yes or no question.

Did you as an economist ever make any review and reach any opinions as to why the wholesale prices in early 2001 were as high as they were?

MR. TRACY: I never asked my staff to specifically do a study. We all had speculation, you know, at

the staff level that it may be one thing or another.

CHAIRMAN DUNN: Including yourself as an economist.

MR. TRACY: Yes.

SENATOR MORROW: Mr. Drivon.

MR. DRIVON: Was there any documentation done? If so, does it still exist as to any thought or analysis that SMUD may have done concerning the reason for the run up in gas prices beginning sometime in early November of 2000, and then going back down later in the year and in January?

MR. ORCHARD: I'm sorry. If there was one, it would have been done by Tom Ingwers. I know that -- I think at one point, my recollection is, we made a filing at FERC requesting that FERC provide -- order price caps on gas, along the same lines as we'd been requesting for two years at that point, that they impose price caps on electricity sales.

My recollection, and I'll have to check with Mr. Ingwers, is that we had not done a study per se, but were -- our feeling was that with prices increasing that fast, there was something amiss, and that we thought FERC needed to step in and look at it.

MR. DRIVON: But no FERC filing would be done, I don't suppose, based simply on a feeling. You must have had --

MR. ORCHARD: Well, I'm sorry --

MR. DRIVON: No, I mean, typically there is at least some staff and administrative work done to come to a decision to make a FERC filing, and then to provide whatever information you're going to provide to the FERC on the issue.

MR. ORCHARD: At that time, many of the filings were, I think it's fair to say, responsive to our financial

concerns and runaway prices. And typically at FERC, there are initial filings which are not particularly complete as far as evidence, and you are not required to provide documentary evidence. And then typically, if it looks like FERC is going to pursue that and order hearings, then you have the opportunity to develop testimony.

With regard to many of those issues, we were simply filing in support of other parties, such as the EOB or the CPUC. And often, many of those parties would end up doing what I'll call the heavy lifting, if there was any to be done, and we would just file in support.

Typically, those studies are extremely expensive to do and provide separate testimony, et cetera.

MR. DRIVON: I understand.

Are you telling us then that to your knowledge, there was no documented work done to explore the reasons for the gas price runup?

MR. ORCHARD: I think I indicated I'll have to check with Mr. Ingwers, but my understanding is, there was no study done. I think people looked at the prices, looked at what they were a year before, and concluded that there must be something amiss.

But as far as a specific study or report, I don't think one exists, but I will check.

MR. DRIVON: Okay, but you're using the word "study," and I'm using a more expansive word, which is "work".

A study, I understand what a study is, I think.

But I'm talking about any work that may have been documented along those lines, if you could check on that.

MR. ORCHARD: I will. I will check.

SENATOR MORROW: Mr. Chavez, do you have a question?

MR. CHAVEZ: Yes, sir, a quick question.

Before the official formation of the Market Monitoring Task Force, did you have an informal group or de facto group that performed the same type of operations or functions?

MR. TRACY: I'm sorry?

MR. CHAVEZ: Previous to the Market Monitoring Task Force, the official formation, did you have some type of informal group, or de facto group, that did same types of work that the Market Monitoring Task Force performed?

MR. TRACY: I think as I said earlier in a prior to January, the Trading Group, which would have been under Tom Ingwers, basically did all of the kinds of things that the Market Monitoring Task Force did from January on. So, within their department, they looked at the market. They made decisions on, you know, what to buy what, to sell, in the forward markets as well as in the spot markets.

MR. CHAVEZ: Thank you.

SENATOR MORROW: Now that Energy Group, they didn't keep formal minutes as such, but surely they made decisions that had to be communicated, up and down the line, to staff to carry out and implement those decisions; correct?

MR. TRACY: Generally the kinds of decisions that they were making were whether or not to buy power six months out, three months out. And they basically had the delegation of authority to deal with transactions in that range, as long as they were not taking a speculative position.

SENATOR MORROW: Tell me, didn't they document their decisions in reports and memorandums among other personnel with SMUD?

09 MR. TRACY: Well, the sum total of all of their  
10 transactions would be reported each month. And we have the  
11 documentation and accounting as to what they did every month.  
12 SENATOR MORROW: Have those been produced to the  
13 Committee?

14 MR. ORCHARD: I believe they have, but I'll  
15 check. Accounting was one of the departments contacted, so I  
16 will check.

17 SENATOR MORROW: Let me go back, higher if you  
18 will, go back to the Market Monitoring Task Force that was  
19 implemented in January of 2001. I'm not sure if I've asked this  
20 question.

21 Did that particular task force generate minutes  
22 on a weekly basis? Or minutes at all?

23 MR. TRACY: No, we did not.

24 SENATOR MORROW: That committee made decisions as  
25 well, too. Did it create documentation, whether it be in  
26 reports, memorandums, or e-mails? Surely there must have been  
27 some discussion about the decisions that this monitoring  
28 committee had made.

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01 MR. ORCHARD: As I indicated, yes, there was  
02 documentation, but it would not necessarily reflect that it was  
03 the task force directing. Essentially what you would see are  
04 documents that were produced in response to questions from the  
05 task force.

06 I believe one example would be the water value  
07 tables that you reference to your letter. That was presented to  
08 the committee and discussed, but you won't see it referenced as  
09 part of the committee.

10 In addition, many of Mr. Sorey's e-mails  
11 reflecting trades or purchases of gas, some of Mr. Ingwers'  
12 e-mails are reflective of decisions that were made at the  
13 committee. The decisions of the committee were orally given, or  
14 directions were orally given, and then the manager would go back  
15 and implement those decisions. That's often why you would see  
16 those e-mails generating direction.

17 SENATOR MORROW: So, the decisions emanating from  
18 the market monitoring committee were oral in nature?

19 MR. ORCHARD: Generally yes, or we agreed.

20 MR. TRACY: The individual who was responsible  
21 for directing the trades sat with the committee, Steve Sorey.  
22 And so, we could verbally tell him and agree that this is where  
23 we were going in a particular week. And then he would go back  
24 and execute that.

25 MR. ORCHARD: In addition, Mr. Sorey's boss,  
26 Mr. Ingwers, was a member of the committee.

27 SENATOR MORROW: Gentlemen, I think you have a  
28 packet. Maybe we need to clarify it for the other

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01 Members.

02 Senator Johannessen.

03 SENATOR JOHANNESSEN: Thank you.

04 I think I'm learning a lot about large  
05 corporations at the moment. I have run few smaller ones.

06 We were very careful about whatever we did, it  
07 would be put in writing, in memos. Of course, this was before  
08 e-mails. Memos, and that type of thing.

09 What you're telling us is that the decisions made  
10 in management were only verbal communication made and nothing in  
11 writing? You have to be kidding me; right?

12 MR. TRACY: No. Some of the information that was  
13 provided, for instance, my records and the tapes for our energy  
14 risk management model, the files for those tapes would document



every transaction that was done. And so, we could take a look at, you know, at any point in time what our position was, and what transactions had occurred in that week. So, it is all documented.

SENATOR JOHANNESSEN: You being in charge of that, what would you do? Get on the phone and say, "Hey, this is the way we should do it now," or do you justify it? Do you put it in the report to management saying, "This is my recommendations, and based on these factors."

Isn't that something you would normally do in that company?

MR. TRACY: The information that was needed to make decisions was brought to the committee, and that information has been provided. That would be what our physical

positions were for each month and by time period. And that would be presented to the committee, along with the forward price curves. Again, that information has been provided to this Committee.

The water values for our hydro, all these pieces of information that are in the data that we've provided would be discussed at the meeting.

We would look at and recognize either a long or short position, for instance, and say we need to now correct that six months out. And so, we would give the directive to the Trading Group to cut our position by X number of megawatts in the third quarter.

And by the end of the week, either I'd receive an e-mail that says it had been finished, or I would get back the position tables which would show me that it was completed.

SENATOR JOHANNESSEN: So, you, then, you do not have any kind of a written memo or anything that overlays this, that basically says, "This is my opinion based on these factors, this is my recommendation and why."

MR. TRACY: Those recommendations, that's correct. Those recommendations were made at the group, and we discussed it.

SENATOR JOHANNESSEN: And in those recommendations, you are giving your opinion as to what ought to take place?

MR. TRACY: We all provided our opinion as to how we should correct a particular position at any particular time.

SENATOR JOHANNESSEN: Then you come up as the

leader, if you will. You're coming up with your recommendations based on all these factors.

Do we have copies of all these recommendations, and the bases for which they were made? How they were made?

MR. TRACY: These recommendations were made orally at the committee, and the decisions were made as a group.

SENATOR JOHANNESSEN: So, there's no minutes or anything on this then?

MR. TRACY: No.

MR. ORCHARD: What you will find, Senator, is that the basis for the recommendations, the basis for decisions, are the documents that have previously been provided, many of them on -- I believe most of them on the various CDs. Those are analytical things done.

In addition, I would just clarify that as to the decisions that were made in the meeting, you could verify them at the next meeting or the meeting after that, because we would then receive a new report specifying our physical or financial positions at that time, so we would know whether it had been done and how successful our folks had been in accomplishing that

21 goal.

22 SENATOR JOHANNESSEN: But you understand what I'm  
23 asking. I hope you understand, because it's important. At  
24 least to me it's important to know the thinking process and what  
25 precipitated certain actions and why.

26 In this particular case, perhaps this gentleman  
27 here is an economist, and obviously the only one. Then his  
28 recommendations, and his logic and reason as to why things

0041  
01 should happen, based on what market factors are there, then I'm  
02 very much interested in finding out exactly what was the  
03 thinking process, and what was the recommendation, and what it  
04 was based on in time and place. What was his recommendations  
05 based on.

06 I don't seem to be able get that.

07 MR. ORCHARD: Well, as I think we indicated, the  
08 recommendations were based on underlying analysis that has been  
09 provided to the Committee. For example, a report that would  
10 indicate what our open position is for power in the third  
11 quarter. And it would indicate, you know, what we needed to  
12 fill for that third quarter. So, that would be the  
13 documentation.

14 But as far as something, a memo that produced --  
15 that said -- from Jim Tracy to the group that said, "I'm  
16 recommending that we go out and purchase an additional 50  
17 megawatts of power for the third quarter because of the  
18 following five reasons," no, there are not such documents  
19 existing.

20 SENATOR JOHANNESSEN: Surprising.

21 Thank you.

22 SENATOR MORROW: Mr. Orchard, I want to go back  
23 to the Market Monitoring Task Force. If I understood your  
24 testimony, you verified that they basically get their  
25 information out orally with respect to the decisions and the  
26 like.

27 MR. ORCHARD: And just to clarify, what you might  
28 see, however, is an e-mail from Mr. Ingwers later on saying,

0042  
01 "Pursuant to our meeting," or maybe not pursuant to our meeting,  
02 but "We're going to go out and buy 10,000 decatherms of gas for  
03 a two-year period," or something. So, that might be the way  
04 it's memorialized.

05 SENATOR MORROW: I've had Mr. Chavez hand to you  
06 a document. I marked that as our Exhibit G, in the upper  
07 right-hand corner.

08 MR. ORCHARD: I see that.

09 SENATOR MORROW: Go ahead and take a moment if  
10 you want to review it. It's an e-mail. It's one of the 155  
11 e-mails that apparently was received by Steve Sorey which SMUD  
12 produced. In this particular case, from Tom Ingwers, dated July  
13 11, 2001.

14 Take a moment and review it, but what I really  
15 want to direct your attention to would be one under, I believe  
16 that's a third bullet there, but I've got a hole from my  
17 notebook there. This will be the third paragraph down, and  
18 actually the last sentence, where it addresses the issues.  
19 Apparently there was a markup on the pricing, where LADWP -- no,  
20 you went from a 10 to a 15 percent markup.

21 The quote is from Mr. Ingwers, "The margin  
22 discussed actually went from 10 to 15 percent from time to time  
23 per the documentation from the market monitoring meetings."

24 Documentation seems to, at least my common  
25 understanding of that word, refers to documents which would be  
26 written something or other. I don't know if it was a

memorandum, report, minutes, or what. But here's an example of the types of information that we're trying to acquire.

Can you tell me whether or not the documentation to which Mr. Ingwers is referring to has been provided to this Committee?

MR. ORCHARD: I believe we've produced all documentation generated by the Market Monitoring Task Force. As I indicated, many of the documents will not be labeled Market Monitoring Task Force, or Market Monitoring Committee, or Risk Management Group.

Many of those documents are related to information on the CDs. There'll be a list of sales, et cetera. So, it may be difficult for the Committee to look at a single document and determine whether it came from the task force or it was presented to the task force. It would be difficult to distinguish those documents from any other document produced under the -- during the normal course of business.

SENATOR MORROW: Mr. Drivon tells me, just so we all know that, this document which has been marked "Confidential" pursuant to our own confidentiality protocols that we've entered into, we can use the documents in open hearing. It will not be attached to the record as such.

So, you're stating in no unconcern terms, the documentation referred to in this has been provided to the Committee.

MR. ORCHARD: To the extent it exists, yes.

MR. DRIVON: With respect to documentation that is discarded pursuant to a retention policy or otherwise, is there an index or log made of the documentation before it's disposed of?

MR. ORCHARD: No, no. If you're asking if there are documents that are retained by our Corporate Files Department, then there is a retention policy. There are those documents that are then -- I believe there's a record of destroyed documents.

However, if it is day-to-day, there are many, many documents that are in the normal course of business that simply end up in the wastepaper basket, and for those, no, there would not be.

MR. DRIVON: Which variety would have been referred to as documentation in that particular e-mail?

MR. ORCHARD: I suspect that would probably be information that was provided to the task force on one of the reports we received. I would suspect it is retained, but I don't know. I mean, I personally don't keep anything from the task force.

MR. DRIVON: It would seem that increasing the margin by 50 percent would be a significant decision that would be documented some place at some point.

MR. ORCHARD: I -- I don't know. I mean, given the fact that despite that it sounds like a big thing, we weren't making, you know, in the scope of the sales that were made to DWR, we were, you know, a very small, small player. So, I think less than half a percent, or something. So, I don't know.

SENATOR MORROW: Let me move on. There are two other document items I want to get to. It shouldn't take quite as long.

Move on to document Item Number 10, if you have those. I want to shift gears here.

Basically Item 10 requests all your policies,

04 procedures, and guidelines for bidding in California's wholesale  
05 energy market.

06 SMUD has provided only one two-page document,  
07 entitled, "General Guidelines Concerning SMUD Energy Trading."  
08 It's dated July 25th, 2001. The only others responsive were  
09 contained on a CD ROM of e-mails received by Steve Sorey.

10 My initial question, gentlemen, is whether or not  
11 SMUD, whether or not you had written guidelines prior to July  
12 25th, 2001?

13 MR. TRACY: There are no actual written  
14 guidelines prior to that.

15 SENATOR MORROW: There are no prior to -- July  
16 25th, 2001 was the first time that SMUD has ever generated any  
17 guidelines, written guidelines, with respect to energy trading?

18 MR. TRACY: The only guidelines would have been  
19 in like the budget documents, where we outlined what we expected  
20 to pay for our net short position.

21 MR. ORCHARD: I believe we did provide those  
22 budget documents to the Committee.

23 SENATOR MORROW: If I can, I think you have in  
24 your package -- I don't think it's confidential -- I've got it  
25 marked under Exhibit E. In the upper left-hand corner is  
26 Exhibit E. It's an e-mail from Mr. Tom Ingwers.

27 Again, it goes to everybody under the sun, it  
28 seems like, but we got it from the e-mail that was retained by

0046 one employee, Mr. Steve Sorey, on the subject of Wholesale Sales  
01 Opportunities. Wherein it states in the first paragraph, "I  
02 thought it would be worthwhile to revisit our ground-rules for  
03 making wholesale sales." This is December of 2000.

04 What are the ground-rules? Again, that would  
05 seem to suggest in the context of that e-mail that we're talking  
06 about something that's tangible.

07 Would this be similar to general guidelines that  
08 we just referred to, dated July 25th, 2001?

09 MR. TRACY: I think the guidelines from July that  
10 you're referring to are the first comprehensive guidelines that  
11 we had each of the areas agree to and sign off on. I'd have to  
12 look at them to verify that.

13 Prior to that, as we worked our way through this  
14 crisis, there were individual decisions made at the Market  
15 Monitoring Task Force. This was one of them, the question of  
16 how do we deal with excess power. And this was something  
17 specifically that came out, if we had excess power, how we could  
18 dispose of it.

19 SENATOR MORROW: Well, I mean, these so-called  
20 ground-rules that are referenced in this particular e-mail, are  
21 those ground-rules contained in any documentation, report,  
22 memorandum, e-mail at that time?

23 MR. TRACY: Not that I'm aware of.

24 SENATOR MORROW: Mr. Chavez.

25 MR. CHAVEZ: Quick question.

26 You said December 2000 for the Market Monitoring  
27 Task Force?

0047 MR. TRACY: The task force actually started up in  
01 January 2001.

02 MR. CHAVEZ: You had said December 2000.

03 MR. TRACY: I'm sorry.

04 MR. CHAVEZ: I just wanted to get a

05 clarification.

06 Thank you.

07 SENATOR MORROW: Mr. Drivon.

08 MR. DRIVON: The date of Exhibit E that we're

looking at is December the 8th of 2000; is that correct?

MR. TRACY: That's right.

MR. DRIVON: And that would be the date that the FERC ordered price caps to be removed in California. Is there any correlation that you know of that's documented between the application and order removing price caps in California, and the decision of SMUD to revisit the ground-rules for making wholesale sales?

MR. ORCHARD: I think this is responsive to the supply shortage we were seeing. You'll see much of the e-mail talks about recallable rights, what to do in the case of a Stage II or Stage III.

Also, the arbitrage of gas against power looks like it was crafted in light of the supply shortage. It indicates that even if we can make money on gas arbitrage rather than generating power, we will not do so if the state is in an alert, and we will -- instead, we will generate power to provide assistance to the state even if we earn less money.

So, I think it is in response to the supply

shortage and the threat of rolling blackouts that the state was facing.

SENATOR MORROW: Let me refer to another item. I think you have this marked as Exhibit F. This is an e-mail from a Mr. George Miller. I understand he's the power systems scheduler, works under Mr. Sorey. It's to Mr. Sorey, dated April 9th, 2000.

In that e-mail, Mr. Miller refers to -- it's just above the first bullet point there -- some additional CERS trading guidelines.

That would seem to infer, at least with respect to CERS, that there are existing guidelines. Again, this is pre-July 25th, 2001.

My question is, has SMUD produced those guidelines to the Committee?

MR. ORCHARD: Again, to the extent that the guidelines exist, we have provided them. I suspect that as here, you're seeing a very informal way of communicating changes, I am guessing, as in an e-mail. So, I would suggest that the others are probably also in an e-mail to the extent that those e-mails were saved.

SENATOR MORROW: Mr. Orchard, as I indicated earlier, the only responsive document we received as far as any guidelines was the one dated July 25th, 2001. But quite clearly, this is referring to additional trading guidelines.

I mean, look, I don't know what those guidelines say. I don't know how pertinent they are.

I do know that they would seem to fall within and

be responsive to the information this Committee has requested and we're trying to obtain.

I'm giving you some examples of why we think, at least thus far, SMUD hasn't come to full compliance. These are the types of documents that we're looking for.

MR. ORCHARD: I think -- my guess is, and I don't know if this was provided in response to Category 10.

I'm hearing that it was not provided in response to Category 10, and in response to some other category; is that correct?

That's -- because otherwise, I'm somewhat confused, because obviously we've provided this document to you. So, I'm trying to discern whether we provided it incorrectly in response to a different category.

SENATOR MORROW: Well, the guidelines exist.

16 This is contained within an e-mail. It only refers to the  
17 guidelines.

18 What I'm at least representing to you, to my  
19 knowledge we haven't received any of the guidelines other than  
20 what we've told you with respect to July 25th.

21 MR. ORCHARD: And I think both Mr. Tracy and I  
22 have testified that there were no formal guidelines before those  
23 guidelines. And I've indicated that they were -- to the extent  
24 they exist, they were done informally, very much like this was.  
25 And that to the extent that we have e-mails or other documents  
26 which would give this kind of information which could be  
27 construed as a guideline, we have produced that to the  
28 Committee.

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01 SENATOR MORROW: So, to the extent that this  
02 document refers to additional CERS trading guidelines, that's  
03 referring to informal, oral guidelines?

04 MR. ORCHARD: Yes. You know, I think it would be  
05 helpful for the Committee to understand that SMUD, and probably  
06 many other market participants, were in full crisis mode at that  
07 time. We were worried about our survival. We were trying to  
08 deal with great uncertainty.

09 And so, many decisions weren't made in a formal  
10 process. We were trying to put out fires on a day-to-day  
11 basis.

12 So, I think that's probably what you're seeing  
13 reflected here. You know, for many, especially utilities, and  
14 even though we're a large muni for the state, we're still a  
15 relatively small energy company or a small utility. So, dealing  
16 with market forces of unprecedented instability was a new thing  
17 for us. And we were desperately trying to deal with fires on a  
18 day-to-day basis.

19 So, it's not surprising to me that there would  
20 not be a formal memo saying, "Here's the guidelines." I think  
21 it is more plausible that these guidelines, to the extent they  
22 exist, would have been fired off in an e-mail that said, "This  
23 is how we're going to deal with it," very much as Mr. Sorey's  
24 e-mail indicates here.

25 SENATOR MORROW: Ms. Bowen.

26 SENATOR BOWEN: I have to say first that I can  
27 totally sympathize with your predicament in January of 2001. I  
28 certainly didn't reduce many of the things that I was doing to

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01 formal memo status.

02 But I do have a lot of pages of handwritten notes  
03 of various meetings.

04 Has anybody gone back to look, to see if there  
05 are --

06 MR. ORCHARD: I think we have provided -- you  
07 know, much of the stuff was done through analysis, as I've  
08 indicated, the types of analysis. Forward price curves, those  
09 tend to be the relevant things.

10 Also, many of Mr. Sorey's e-mails are essentially  
11 equivalent of having notes.

12 SENATOR BOWEN: I'm sure we would find the same  
13 thing in my office. I'm actually not surprised, given what was  
14 going on.

15 I think it's important to remember the context  
16 for all of us of what was going on at that point, because we  
17 really were just not knowing what was going to happen from day  
18 to day, and who was going to sell to the state, and who wasn't,  
19 and what the credit risks would be.

20 But then, when things calmed down, many of the  
21 decisions, discussions, and so forth, did start to be analyzed

22 and set forth in a more formal way. So, I guess I'm curious  
23 about whether --

24 MR. ORCHARD: And I think that you will find  
25 that, too, for us, because as the FERC started issuing orders in  
26 mid-last year, you'll see that our documentation, we now have  
27 formal trading policies. They're just -- quite simply, at that  
28 time there just wasn't time.

0052  
01 SENATOR BOWEN: Yes, I think our hair was on  
02 fire. We weren't writing down what we were going to do to put  
03 the flames out. We were just grabbing buckets.

04 MR. ORCHARD: Yeah, pretty accurate description.

05 SENATOR MORROW: Let me also state, though, that  
06 of course the Committee subpoenas request information that  
07 really go back before it hit the fan, so to speak. I'm  
08 concerned about compliance with those requests as well, too.

09 I understand. A year ago, when we were in the  
10 middle of the crisis, and everybody was jumping around, hey, I  
11 am sympathetic to that.

12 All the more reason -- I mean, if I'm hearing  
13 that you didn't have formal guidelines and formal procedures put  
14 down, and you were relying on e-mail, all the more reason that  
15 it becomes very important that subsequently, SMUD would employ  
16 some sort of overlying software that would have the effect of  
17 destroying the e-mails that would reflect the guidelines that  
18 apparently we're seeing here.

19 Let me go to your Exhibit G again. I think you've  
20 addressed that, but I want to go to another portion of that.  
21 Again, this is the e-mail dated July 11th, 2001 from Mr. Ingwers  
22 to Mr. Sorey.

23 It states, this would be in the third paragraph  
24 under the third bullet, "We did not adopt formal CERS pricing  
25 strategy until April 2001."

26 Two words there. One word of importance, formal,  
27 formal pricing strategy.

28 Again, I don't know what you mean by formal. To

0053  
01 me, in common vernacular, that would seem to, when something's  
02 formalized, it's put down in documentation. And if it has, this  
03 Committee hasn't received anything with regard to pricing  
04 strategy.

05 MR. ORCHARD: Senator, I would point you to your  
06 Exhibit F, which is an April document from -- an e-mail from  
07 Mr. Sorey stating, "CERS trading guidelines."

08 I believe that is likely the e-mail or the  
09 guidelines that Mr. Ingwers is referring to in his e-mail back to  
10 Mr. Sorey, Mr. Schwermann, and Mr. Holcomb.

11 SENATOR MORROW: Okay, I guess, fine. I think we  
12 need some help. Where is it? Where are the guidelines?

13 MR. ORCHARD: The guidelines are set forth here.  
14 It says, "Here are the guidelines if we're going to purchase  
15 energy on behalf of CERS and apply a 15 percent inflator."

16 SENATOR MORROW: So, the guideline is actually  
17 contained. The guideline is the e-mail from Mr. Ingwers to  
18 Mr. Sorey, dated July 11th?

19 MR. ORCHARD: No, I would think -- I'm guessing  
20 that this, the April 9th e-mail from Mr. Sorey to Mr. Miller and  
21 Mr. Hart, and cc'd to others, titled, "Trading Direction," April  
22 9th, sent at 8:11 a.m. would be an example of one of those  
23 directives that came out of -- in fact, I know it is -- it is a  
24 directive that came out of the Market Monitoring Task Force.

25 So, this is a prime example of how we gave  
26 direction, and then direction was then recorded. But you will  
27 not see, as I say, you will not see a reference to the Market

28 Monitoring Task Force.

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01 SENATOR MORROW: So, you're saying these e-mails,  
02 in effect, are the guidelines.

03 MR. ORCHARD: I would suggest that yes, they are.

04 SENATOR MORROW: Any other questions in this area  
05 before I move on to the last document item? Apparently not.

06 Document Item 42, you want to shift gears to  
07 that. That requests "All documents relating to any bidding or  
08 trading strategies employed by you or by others in the  
09 California wholesale electricity market."

10 SMUD has provided no hard copy documents in  
11 response to this question. You did provide one 106 responsive  
12 documents and 20 responsive e-mails contained in a CD ROM Of  
13 the 106 documents, those that provide strategy information are  
14 all dated prior to 2000. To be exact, these would include  
15 monthly strategy meeting agendas, purchase power strategy  
16 outlines and like for 1998 and 1999.

17 You don't have anything for 2000 and beyond.

18 MR. TRACY: Basically SMUD did not have any what  
19 you would call trading strategies. The key there is trading.

20 Essentially, because we were a net short utility,  
21 our activity was around purchasing the energy that was needed  
22 for the day of, and disposing of any contract block energy that  
23 was surplus for a particular day.

24 The closest thing to a trading strategy would be  
25 related to the water values that have been provided. That's  
26 where we calculate for a limited energy resource, when would be  
27 the best time to actually use that water, and what is the  
28 estimated cost of replacing that water if it were used today.

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01 SENATOR MORROW: At least in 1999 and 1998, you  
02 had monthly strategy meeting agendas. Those were provided.

03 That stopped in 2000?

04 MR. TRACY: I'm guessing that that may have been  
05 Tom Ingwers' Trading Group. And as I said before, as we got  
06 into the fall of 2000, there was sort of a transition between  
07 them doing the strategy, whatever the strategy they were  
08 pursuing at that time, to it being shifted over to a separate  
09 risk management group to oversee that.

10 So, if those -- and I'd have to look and see --  
11 but if those are referring to some minutes that they kept of --  
12 their strategy sessions in that work group, they would have  
13 ended sometime late in the year 2000 as we transitioned.

14 SENATOR MORROW: I'm only telling you what we  
15 received thus far, very specific monthly strategy agendas only  
16 those two years.

17 I don't know what was magical about 2000, at  
18 least until you get to around September, or why there would have  
19 been a change in the policy to no longer maintain those types of  
20 agendas.

21 MR. TRACY: Because at point in time, they're  
22 transitioning responsibility for making decisions in the forward  
23 markets from their group to my group at SMUD.

24 SENATOR MORROW: Of the 20 e-mails or so from  
25 Mr. Sorey, several referenced documents or contained drafts of  
26 documents that are, at least by our view, inexplicably missing  
27 from SMUD's general document production.

28 An example of that, do you have Exhibit H? That

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01 is an e-mail from Mr. Kevin Hart to Steve Sorey, dated July 3rd,  
02 2001. And in it, it refers, a simple e-mail, "Here is the draft  
03 write-up of our methodology."

04 If this is the draft, where is the official or



05 formal write-up of that methodology? To my knowledge, the  
06 Committee hasn't received any such.

07 And Mr. Drivon pointed out, where's the draft  
08 itself? Again, this is contained in or just referenced in an  
09 e-mail.

10 I have the draft, but it's really a part of the  
11 e-mail itself.

12 MR. ORCHARD: Is the draft attached here so we  
13 could look at it? It might be -- it might be at this point have  
14 been incorporated into those trading guidelines. We don't know  
15 without being able to review the document.

16 SENATOR MORROW: Mr. Duran's going to show it to  
17 you.

18 MR. ORCHARD: I'm sorry. Neither Mr. Tracy nor I  
19 are familiar with this document. I don't know if it was ever  
20 finalized or not.

21 If it was finalized, you know, we'll go back and  
22 look. But I don't know whether it was ever finalized or not. I  
23 presume -- it isn't in the repository; it was not finalized.

24 SENATOR MORROW: You can see at least where  
25 that's not an unreasonable question or point of inquiry.

26 MR. ORCHARD: I think it's a completely  
27 reasonable question. Sometimes -- I will say that sometimes  
28 documents -- staff works on documents that are drafts that never  
0057 become final because either a supervisor rejects their ideas, or  
01 whatever has moved passed them.

02 So, no, I think the question is understandable  
03 certainly.

04 SENATOR MORROW: One final point here. I think  
05 you have Exhibit I. It's an e-mail from a Mr. Gary Lawson. I'm  
06 not sure who he is. It's dated August 1st, 2001, again to a  
07 multitude of employees, from which we only have retained e-mail  
08 of Steve Sorey on the subject of, "UARP Strategy for Weekend of  
09 August 3rd through 5th."

10 UARP I understand means the Upper American River  
11 Project.

12 MR. ORCHARD: Yes.

13 SENATOR MORROW: Do you have that?

14 MR. ORCHARD: Yes, I see it.

15 SENATOR MORROW: Look, this is an excellent  
16 example of what the Committee is looking for, where it outlines  
17 strategies very clearly. However, this is the only one we have  
18 for one particular weekend.

19 What about all the other weekends and dates, or  
20 was this the only written strategy that you have?

21 MR. ORCHARD: This is dealing with a unique  
22 situation. This is because we used a great deal of our  
23 production capability from the Upper American River Project to  
24 provide the state with energy and the ISO with energy in  
25 November, December, and January of 2000, 2001, because of the  
26 energy shortage. That is production that would normally be done  
27 in the June through September timeframe because it's our  
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01 cheapest resource, and it's also our highest energy needs.

02 Because of that, we shifted the way flows occur  
03 in the Upper American River Project, and it negatively impacted  
04 the rafting community up there, and we were getting a lot of  
05 protests from the rafting community. So, this is our attempt to  
06 respond to their needs and to try to provide them some assurance  
07 that on certain days, they would be able to book rafting trips  
08 down the American River Project.

09 SENATOR MORROW: So, this is an isolated instance  
10 where you'd actually written the strategy and disseminated that

11 among your employees?

12 MR. ORCHARD: Well, I would -- no, it is not,  
13 because you have more than 150 e-mails from Mr. Sorey, and we've  
14 pointed to several of them, which again indicates that our  
15 normal way of communicating these types of decisions is through  
16 e-mail.

17 SENATOR MORROW: Any other questions by Committee  
18 Members or staff.

19 Why don't we do this. Thank you, gentlemen. I  
20 appreciate your testimony, you being here today.

21 We're going to take a quick break here for  
22 Evelyn. Is ten minutes fine? Okay, ten minutes, and we'll  
23 follow-up with LADWP when we come back. So, we're in recess.

24 Thank you.

25 [Thereupon a brief recess  
26 was taken.]

27 SENATOR MORROW: Welcome back. Going to the next  
28 phase of this hearing, we have some folks representing the Los

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01 Angeles Department of Water and Power.

02 First of all, by way of an overview thus far, in  
03 response to the Committee's initial voluntary document request,  
04 LADWP has submitted documents to the Committee's depository on  
05 three dates: June 28th, 2001; July 13th and July 20th, 2001.

06 Subsequently after the issuance of the  
07 Committee's legislative subpoena and correspondence with staff,  
08 DWP has made three additional document submissions on December  
09 14th, 2001, as well as January 22nd and February 22nd of 2002.

10 In total, LADWP has submitted 12,500 pages of  
11 documents contained in four boxes, and 280 megabytes of  
12 electronic data contained in 5 CD ROMs.

13 To put that in somewhat perspective, SMUD, as we  
14 indicated earlier, had submitted 325,000 pages of hard copy  
15 documents, and several gigabytes representing 27 CD ROMs.

16 Here with us today we have three gentlemen, I  
17 understand: Mr. Stanton Snyder, who's the Assistant Attorney  
18 for the City of Los Angeles; Eric Tharp, the Director of  
19 Government and Public Affairs for DWP; and Mr. Kent Noyes.

20 Gentlemen, for those intending to testify and  
21 answer the Committee's questions factually, I'd ask you to stand  
22 and be sworn in.

23 [Thereupon KENT NOYES,  
24 STANTON SNYDER, and  
25 ERIC THARP swore to tell  
26 the truth, the whole  
27 truth, and nothing but  
28 the truth.]

0060

01 SENATOR MORROW: Gentlemen, let me first ask,  
02 because I apologize, Mr. Noyes. I'm not quite sure what your  
03 position and title is, or your responsibilities. Let me just  
04 ask you to briefly introduce yourselves and what your titles and  
05 basically your job functions are with regard to DWP.

06 MR. NOYES: Actually, the card hasn't been  
07 updated and does have an old title on there.

08 I'm the Assistant Director of System Planning and  
09 Projects.

10 MR. SNYDER: Senator Morrow, I'm Stanton J.  
11 Snyder with the L. A. City Attorney's Office.

12 I have Mr. Noyes on my right. He's the gatherer  
13 of the documents you have.

14 I have Mr. Tharp on my left because he has  
15 primarily been the communicator with Mr. Chavez.

16 We're happy for this opportunity to cooperate

17 with the Committee.  
 18 SENATOR MORROW: Thank you, gentlemen, for coming  
 19 up here.  
 20 Perhaps one of you can give a brief overview of  
 21 LADWP in terms of the size and scope of its operations, how much  
 22 energy and capacity, how many customers, and the like.  
 23 MR. THARP: The Los Angeles Department of Water  
 24 and Power has 3.8 million customers.  
 25 I'm Eric Tharp. I'm kind of losing my voice, so  
 26 it may go in and out.  
 27 We have 3.8 million customers. We have about  
 28 7,000 megawatts of total capacity on our system. That's  
 0061  
 01 assuming every unit is operating. Our system peak is about  
 02 55-5600 megawatts.  
 03 SENATOR MORROW: How many employees do you have?  
 04 MR. NOYES: About 7500 employees, that includes  
 05 water system.  
 06 SENATOR MORROW: All in all, would this be the  
 07 largest municipal utility district in Southern California?  
 08 MR. NOYES: Yes, it's the largest municipal  
 09 utility in the U.S.  
 10 SENATOR MORROW: In the United States.  
 11 Before we delve into matters of responsiveness to  
 12 the priority 20 list, again, there's a few things I want to go  
 13 over.  
 14 First of all, in terms of raw numbers, out of the  
 15 70-plus subpoena categories, DWP has produced less than 40  
 16 e-mails, and less than 40 memos.  
 17 Curiously missing are -- you've heard me refer to  
 18 this to some degree earlier with SMUD -- agendas, minutes,  
 19 notes, and e-mails concerning internal executive meeting as well  
 20 as power trading wholesale market strategy and risk management  
 21 group meetings. Missing are formal and informal guidelines and  
 22 policies and procedures, various e-mails, internal documents,  
 23 and the like.  
 24 Let me go first of all to the e-mails. In your  
 25 document submission, you provided a relatively small number. I  
 26 think in response to Document Request Number 10, you provided  
 27 the Committee with four e-mails. Document Request Number 10  
 28 asked for documents relating to policies, procedures, or  
 0062  
 01 guidelines for bidding in California's wholesale energy market.  
 02 Four e-mails were provided.  
 03 And in Document Request Number 11, relative to  
 04 analyses, assessments, and projections of transmission capacity  
 05 in California's wholesale energy markets, you provided a total  
 06 of 18 e-mails, and only 8 of them were directly applicable to  
 07 the request.  
 08 Let's talk about the 3-mails first, gentlemen.  
 09 Tell me first of all, what is DWP's e-mail retention policy, if  
 10 any.  
 11 MR. NOYES: I'm not aware that we have a  
 12 retention policy on e-mails.  
 13 SENATOR MORROW: Do you know as far as the  
 14 practice of any of your employees in terms of retention of  
 15 e-mails?  
 16 MR. NOYES: I believe the practice would be that  
 17 each employee would keep his files as long as he felt like they  
 18 were relevant.  
 19 SENATOR MORROW: How did DWP -- these questions  
 20 are very familiar; they're similar to the ones I've asked  
 21 SMUD -- how did DWP go about attempting to comply with our  
 22 request with respect to electronic information, documents, and

e-mails with its employees?

MR. NOYES: We gathered a group of managers and supervisors together that we felt covered every area of all 72 questions that were asked. We went through every question individually. We discussed who we thought would have relevant data and how we would comply. Then we assigned that supervisor,

or that manager assigned a single person to be responsible for collecting the data.

They were all instructed to provide all the data that they had, which included e-mails, memos, other documents, and provide everything.

They were instructed that if they had something that they felt was of too sensitive a nature to release, that they were ordered to release it unless they had legal authority not to release it, and I'm not aware that that happened. As far as I know, we released everything.

SENATOR MORROW: So we get an idea of the scope, when DWP made a determination as to who might have likely information in e-mails that would be responsive, about how many people or employees would fall in that category?

MR. NOYES: Well, of the people who led the responsibility of collecting the data, it narrowed down to about six people. But each one of those persons would have gone to other people under them to collect data.

SENATOR MORROW: So, you had six people who were tasked with the responsibility of actually collecting data.

MR. NOYES: Yes.

SENATOR MORROW: So, the number of people out there in the universe of DWP that they would have gone to, that's the same whether or not they had documentations that were responsive would be what, roughly?

MR. NOYES: I don't know. I don't have that answer. But they were responsible for taking a look at their area, and assessing who would have input to that, and going to

those sources.

SENATOR MORROW: And presumably, if they had e-mails still retained that will be responsive, they would be required to submit those and print those?

MR. NOYES: That's correct.

SENATOR MORROW: You heard us talk earlier, and I don't know what mail program DWP employs with its folks. If it's Microsoft Outlook, that's one of them that I understand, as I indicated, even though you may push the delete file system, and the particular employee may no longer retain that, it can go into a more general bin, if you will, and be retrievable.

Did you determine whether or not or coordinate with any of your information technology folks to see if that was the case with DWP?

MR. NOYES: The people on the power side of the house that had this responsibility were on Lotus Notes until about approximately November of last year, and then they did migrate to Outlook. They're in Outlook now.

I do not know the answer to your question as to whether these were retrievable. If files were deleted, whether those are retrievable or not retrievable.

SENATOR MORROW: First of all, when did you go from Lotus Notes to Microsoft Outlook?

MR. NOYES: It was a period surrounding November, and it was spread over, so I don't know the exact dates, but I know our particular organization occurred in November of last year.

SENATOR MORROW: You don't know whether or not

0065

01 Lotus Notes, whether or not that's the type of program that you  
02 could retrieve e-mails from a general bin after it's been  
03 deleted from the file?

04 MR. NOYES: I don't know.

05 SENATOR MORROW: Obviously, that's something  
06 we're very much interested in. It's the Committee's view that  
07 if indeed that is such program, and electronic items that are  
08 responsive to our request, if they are retrievable in any way,  
09 fashion, or form, then they need to be produced in accordance  
10 with the subpoena.

11 I don't know what your thoughts are on that.

12 MR. NOYES: Well, negligent or not, I did not  
13 give those instructions. I asked them to retrieve the files and  
14 records that they had and provide them. I did not ask them to  
15 go through some sort of retrieval process, and wasn't even aware  
16 that that was something they could do.

17 SENATOR MORROW: I'm trying to find out if we can  
18 come to an agreement here, if you're going to look into that?  
19 That's something the Committee is very much interested in.

20 MR. NOYES: We will look into whether that's  
21 available or not, or whether we can do that or not.

22 MR. THARP: I know that the Lotus Notes files  
23 that you had previously saved, you could maintain those on your  
24 own PC, or they could be maintained on the main frame, or on  
25 some other server.

26 SENATOR MORROW: Mr. Drivon.

27 MR. DRIVON: Do any of you folks know what  
28 operating system is used on the servers that serve the network  
0066 there?

01 MR. NOYES: I don't know.

02 MR. THARP: Not with certainty. I think it's  
03 Windows 2000, but I'm not certain.

04 MR. DRIVON: Do you know whether a separate  
05 exchange server is used?

06 MR. THARP: I do not.

07 MR. DRIVON: This subpoena was served September  
08 the 6th of 2001, which is almost exactly six months ago.

09 Is there any direction been given to the  
10 employees of LADWP to maintain and retain documentation,  
11 including e-mails and other documentation, because of the  
12 existence of the subpoena?

13 MR. NOYES: I'm not aware of such direction.

14 MR. DRIVON: Do we understand, then, that  
15 individual employees of LADWP can, within their discretion at  
16 the present time, destroy or delete documents that may be  
17 subject to the subpoena?

18 MR. NOYES: I'm not aware of any change in  
19 policy, and so yes. The answer would be yes.

20 MR. SNYDER: From a legal point of view, since  
21 you're giving him a legal question, I don't know that that is  
22 within their discretion.

23 He stated before that the policy is that they're  
24 supposed to keep things that are relevant. Obviously, if  
25 there's a subpoena out --

26 MR. DRIVON: That isn't what he said. He said  
27 that they were asked to print out or otherwise deliver to him  
0067

01 whatever they thought was relevant.

02 MR. SNYDER: Right.

03 MR. DRIVON: That's why I asked whether there was  
04 a direction then that that be a continuing thing, or whether or  
05 not they, in their discretion, could, you know, delete or

06 destroy documents.  
07 MR. SNYDER: But obviously if it's relevant, you  
08 know, they wouldn't be -- it wouldn't be within their discretion  
09 to destroy documents.  
10 I don't disagree with the first part of your  
11 question. It's the second part where you're making the  
12 conclusion as to what's in their discretion.  
13 If there is something that's relevant, obviously  
14 they shouldn't destroy it.  
15 MR. DRIVON: Since the original group of, say,  
16 three or four e-mails has been delivered to us, have there been  
17 additional ones delivered to you folks that will be delivered to  
18 us? Or do we understand that there's nothing relevant to our  
19 inquiry that's occurred since the first production?  
20 MR. NOYES: As far as I know, you have all the  
21 data that we have on that.  
22 MR. DRIVON: So, since these documents were  
23 delivered to us, then I understand nothing relevant to our  
24 inquiry has been done at LADWP, because if it had, we'd have  
25 copies of it?  
26 MR. NOYES: Yes. At the time we made our  
27 information requests, we asked everybody to provide the data.  
28 And as far as I know, they did. But we did not go back  
0068 periodically and say, has anything more come in on this item?  
01 So, we provided what we had at that time, but  
02 have not gone back and asked, okay, has anything new come up.  
03 MR. DRIVON: Nor did you ask that if anything new  
04 did come up, that it be retained or sent to you.  
05 MR. NOYES: No, I didn't.  
06 SENATOR MORROW: Just to clarify, when you tasked  
07 people with collecting information from your employees'  
08 computers, e-mails and the like, would that have included  
09 members of your Trade and Risk Review Committee?  
10 MR. NOYES: It would have included anybody who  
11 was relevant.  
12 The committee has never formally met, the Trade  
13 and Risk Committee. There was a policy set up, but the  
14 committee was never formally established, and there are no  
15 minutes or anything from that committee.  
16 We did specifically ask for that, because I think  
17 that was something that was identified to us. And there are --  
18 there were no minutes or e-mails or memos established with those  
19 committees that we did not submit.  
20 SENATOR MORROW: I'll get into it a little bit  
21 more, but let me just be a little bit more specific, if whether  
22 or not DWP tried to obtain any retrievable, responsive e-mails  
23 from Mr. Mark Ward, Michael Webster, Mario Ignacio, and Kenneth  
24 Silver?  
25 MR. NOYES: Mark Ward is the supervisor of that  
26 group. Some of the other people, I don't know the names, but  
27 Mark Ward would have pulled -- he was one of the six people that  
0069 was charged with assembling data, and would have assembled that  
01 for his people.  
02 I don't recognize the other names.  
03 SENATOR MORROW: That's why we have a court  
04 reporter here. Be glad to provide you those names.  
05 By the way, all these proceedings are on a web  
06 site. Evelyn wanted me to make mention of that, and I'll give  
07 that web site number to everybody. You can actually get a  
08 transcript of these proceedings.  
09 Do you have something to add?  
10 MR. NOYES: Yeah, Ken Silver, I'm sorry. I do  
11

12 know Ken Silver, and Ken Silver was a person who was asked to  
13 provide this data by Mark Ward.

14 SENATOR MORROW: I mentioned those names because  
15 they are the focus of the Committee, not to the exclusion of  
16 anybody else, but they are. And from what I've heard, since  
17 you're unable to say, of course, whether or not you had a type  
18 of computer technology back then, Lotus, you can't say one way  
19 or the other whether or not some e-mails that may have been  
20 created back then are totally retrievable, so you can't say  
21 whether or not, at least at this point, you have retrievable,  
22 responsive e-mails with respect to them or anybody else at this  
23 point? That's something we're trying to find out.

24 MR. SNYDER: Do you want to supplement your  
25 answer as to Mario Ignacio.

26 MR. NOYES: I don't know Mario Ignacio, but I  
27 understand he works in our financial services organization, and  
28 Financial Services was asked to provide information.

0070

01 SENATOR MORROW: I don't know, but I'm told that  
02 he's the manager of Investment and Risk Control, whatever that  
03 is.

04 Any questions on e-mail?  
05 The audio recordings we talked about earlier with  
06 respect to SMUD, and DWP's document index response, you stated  
07 that you have over 26,000 hours of audio tapes that could be  
08 made available to the Committee for review.

09 First of all, is that an accurate -- did I state  
10 that accurately?

11 MR. NOYES: Yes.

12 MR. THARP: Yes.

13 SENATOR MORROW: Tell us what kinds of tapes are  
14 these? We're finding out that different utilities have  
15 different types of tapes. What types do you have?

16 MR. NOYES: My understanding is that every  
17 transaction that our wholesale traders would be involved in, and  
18 any discussions that they would have with other utilities,  
19 everything that they discuss over the phone is recorded. And  
20 all of these are on audio tape.

21 SENATOR MORROW: Is it the type of audio tapes,  
22 are these the type of standard cassette tapes that would be used  
23 in a standard machine?

24 MR. NOYES: I don't know that for sure, but I  
25 presume it is.

26 SENATOR MORROW: We're trying to ascertain  
27 whether or not they require special equipment.

28 MR. NOYES: Not as far as I know, but I don't

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01 know that for certain.

02 SENATOR MORROW: That's something that the  
03 Committee is interested in.

04 What is your retention policy with regard to  
05 these audio tapes that tape the trading and action from your  
06 traders?

07 MR. NOYES: I don't know what that policy is, but  
08 my guess is that we keep those perpetually.

09 SENATOR MORROW: Ladies and gentlemen, I'm not  
10 much interested in guesses. I mean, if you can define that  
11 more.

12 Certainly we've requested your retention policies  
13 on every item that's been request, and that would include audio  
14 tapes. I don't believe they've been adequately presented thus  
15 far.

16 MR. THARP: I know that we have a policy on the  
17 tape retention, but I don't recall exactly what it was, and I

18 don't want to give you misleading information.  
 19 SENATOR MORROW: If you can give me a commitment  
 20 to get that?

21 MR. THARP: I will certainly do that.

22 SENATOR MORROW: Okay, thank you.

23 MR. SNYDER: Also, Senator, you asked about the  
 24 tapes.

25 One of the tapes, one of my attorneys informs me  
 26 she has, talks about when we did the sleeve transaction, either  
 27 for the ISO or CDWR, where DWP thought the price was too high,  
 28 but they were informed to buy anyways.

0072  
 01 So, you're asking about the nature of the tapes.  
 02 That's one in particular I find to be very interesting.

03 SENATOR MORROW: On that subject, let me ask you  
 04 this. The tapes that you have, are they indexed in such a way,  
 05 or can they be indexed in such a way?

06 To my knowledge, I don't think the Committee has  
 07 received such an index so we'd know what tapes for what period  
 08 of time, how long they go back.

09 I'll give you one example where it was a problem  
 10 with SMUD, where all we had were just a number reflecting the  
 11 day of the month. We don't know what month or what year.

12 How retrievable are these? For instance, if we  
 13 want to go to a trading transaction that occurred on a  
 14 particular day in a particular month of a particular year, how  
 15 easily can that be accomplished to go to that?

16 MR. THARP: I believe that can done fairly  
 17 easily, because I know different managers have gone back to ask  
 18 on specific days, "I want to listen to the tape on that  
 19 transaction," and have been able to do that.

20 SENATOR MORROW: Would it be too much to ask from  
 21 DWP, because we've already asked it, if you could provide an  
 22 index? I don't need every single conversation, but at least an  
 23 index for the period of time covered by those audio tapes, in  
 24 each day?

25 MR. THARP: We can do that. I think the tapes  
 26 may be arranged, here's one day, here's the next day, here's the  
 27 next day. And I think there's 13 months' worth of tapes.

28 MR. SNYDER: So, an index by day is sufficient?

0073  
 01 SENATOR MORROW: Would this be the last 13  
 02 months?

03 MR. THARP: The months of study here, I think.

04 SENATOR MORROW: That falls within the scope of  
 05 the subpoena.

06 MR. THARP: Yes.

07 SENATOR MORROW: Very well, good.

08 MR. SNYDER: But the index you want is by day or  
 09 by month, not necessarily what was said in each conversation?

10 SENATOR MORROW: Well, even I recognize that --

11 MR. SNYDER: No, we're just trying to comply,  
 12 because if it's just by day, they can write down: This tape is  
 13 for this day; this tape is for that day.

14 If it's by each conversation, then someone has to  
 15 listen to each conversation and write a summary as to what is on  
 16 each tape for each transaction.

17 SENATOR MORROW: No, just the dates are fine for  
 18 now. We may have further questions down the line, perhaps.

19 Now these tapes, where are they physically  
 20 located at present?

21 MR. NOYES: They're at the Energy Control Center.

22 SENATOR MORROW: Which is where?

23 MR. NOYES: In Sun Valley, California in the Los



24 Angeles area.  
 25 SENATOR MORROW: I know that you've indicated  
 26 that you're going to make these available to the Committee to  
 27 listen to.  
 28 How do we best go about obtaining those tapes or  
 0074 listening to them?  
 01 MR. SNYDER: We would invite you either to come  
 02 to Sun Valley or Sunset. There is quite a bit of security  
 03 there. We can have it brought -- we can have those brought to  
 04 our main office building if you'd like to listen to them.  
 05 SENATOR MORROW: Mr. Chavez.  
 06 MR. CHAVEZ: Would it be possible to make copies  
 07 of those tapes and send them up, or would you have to keep them  
 08 on the particular audio reels that they're on now?  
 09 Meaning, if you had to transfer them to an audio  
 10 cassette, normal audio cassette, is that possible, or is that  
 11 just not feasible in the sense that if you have 24 hours a day  
 12 recorded, and you have 60-minutes audio tape, would it better to  
 13 go down to L.A. and listen to them there? Or, if we give you  
 14 particular dates that we wanted to look at, could you send that  
 15 information up?  
 16 MR. THARP: I think if you could give us the  
 17 particular dates, we could make copies. I mean, otherwise, it's  
 18 26,000 tape duplications.  
 19 SENATOR MORROW: Don't want to do that, I  
 20 understand.  
 21 MR. THARP: But if you have 5 days, 10 days, 30  
 22 days that you're interested in, we could provide that. And if  
 23 you knew the hour of the transaction, that would reduce the  
 24 quantity of tapes.  
 25 You can certainly come down and listen any time  
 26 you want. If there's certain ones you want duplicated, we could  
 27 make that available.  
 0075 SENATOR MORROW: Thank you.  
 01 Mr. Drivon.  
 02 MR. DRIVON: Can you give us a list of the  
 03 telephone numbers that are recorded, and basically who is on  
 04 your end of the telephone?  
 05 MR. THARP: Yes.  
 06 MR. SNYDER: We can, but Senator Morrow said all  
 07 we had to do was give it by date.  
 08 MR. DRIVON: I don't mean an index of -- I'm sure  
 09 that you have certain phones that are connected to do the  
 10 recording equipment. We'd like to know -- we'd like for you to  
 11 identify those telephones.  
 12 MR. NOYES: By title?  
 13 MR. DRIVON: By number, and then the title or job  
 14 description, or something, of what type of person would sit  
 15 there. Like, this is a trader; or, that's a trading supervisor;  
 16 or, this is somebody that's designated to talk to DWR, or  
 17 whatever.  
 18 MR. THARP: We could easily do that, yes.  
 19 SENATOR MORROW: Any other questions on this.  
 20 Gentlemen, contained within your latest document  
 21 submission were two CDs, only two. And CD Number 2 contains a  
 22 Power Point Presentation reports for May 2000 through July and  
 23 August 2001.  
 24 Apparently they were sent to the Trade and Risk  
 25 Review Committee and the Executive Energy Risk Policy  
 26 Committee. These were indexed by you as being produced.  
 27 When my staff opened up those documents through  
 0076

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01 the CD, they found that 9 of those 16 documents were blank. The  
02 missing documents, so you know, apparently: May 2000, June  
03 2000. I mean, we're talking about these Power Point  
04 presentation reports for the periods of: May 2000 and June  
05 2000; September 11th, 2000; October 2000; March 2001; May 2001;  
06 June 2001; and July through August 2001.

07 I guess my first question is, why are they blank,  
08 and whether or not they can be produced, or DWP will produce  
09 them?

10 MR. NOYES: I can't answer why they were blank,  
11 but we can reproduce them if you -- yeah, if they were bad, we  
12 will reproduce them and send them to you.

13 SENATOR MORROW: Well, they certainly fall within  
14 the purview of our requested documents. I think you  
15 acknowledged that by at least putting them on the CD, even  
16 though in blank form.

17 So, I'm hearing that you will produce those  
18 items?

19 MR. NOYES: Yes.

20 MR. SNYDER: It can be done, no problem.

21 SENATOR MORROW: Very well.

22 I'd like to address your letter dated March 1st,  
23 2002, which we received late Friday. That is in response to my  
24 February 7th letter.

25 SENATOR BOWEN: Is that in the binder?

26 SENATOR MORROW: It is in the supplemental  
27 packet, Ms. Bowen.

28 SENATOR BOWEN: I've got it, thank you.

0077

01 SENATOR MORROW: What I'd like to do is just kind  
02 of go through some of these.

03 Your answer to Question 1, do you have that  
04 document?

05 MR. NOYES: I do.

06 SENATOR MORROW: Your answer to Question 1 raises  
07 a few questions. I want to break it down into about three  
08 bite-sized pieces.

09 First of all, your response states, looking down  
10 at Answer 1, it'll be the last paragraph. "It," referring to  
11 LADWP, "then performs telephone surveys with other utilities to  
12 determine the market price."

13 Do you have that?

14 MR. NOYES: Yes.

15 SENATOR MORROW: My first question is, what  
16 utilities you're referring to that you survey. Are we talking  
17 about investor-owned utilities, municipal utilities, or what?

18 MR. NOYES: I don't know specifically, but it  
19 would be utilities that reflect the market price of energy,  
20 which could include both IOUs or municipally owned utilities.

21 SENATOR MORROW: You folks gave the answer.

22 MR. NOYES: It wouldn't be the same on any day.  
23 It could be a different set of utilities on different days.

24 SENATOR MORROW: Okay, so it could include both  
25 investor-owned utilities and municipal utility districts?

26 MR. NOYES: Yes.

27 SENATOR MORROW: Why would you conduct these  
28 surveys?

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01 MR. NOYES: Keep in mind that we really don't set  
02 anything or do anything in our system to market energy. That  
03 the number of units that are on are done solely for our system  
04 security. That determines the number of units that we would  
05 bring onto our line.

06 We never start up a unit in hope of making a

07 sale. So, we bring these units on. Once we have these units  
08 on, then we make an assessment, with these units on to protect  
09 our system security, are we in a position to sell energy, or  
10 would it be helpful to buy energy?

11 And we would make a survey to find out the market  
12 price, and that market price would tell us whether it would make  
13 sense for us to buy, or whether it would make sense for us to  
14 sell.

15 SENATOR MORROW: So, when you're surveying these  
16 utilities, you're asking for their price, and what else? What  
17 other information are you trying to obtain?

18 MR. NOYES: Just the market price.

19 SENATOR MORROW: Just market price and nothing  
20 else?

21 MR. NOYES: Yes.

22 SENATOR MORROW: Do you tabulate that information  
23 and reduce it to memorialize it in any sort of document?

24 MR. NOYES: It's documented in the daily -- the  
25 real-time daily plans.

26 SENATOR MORROW: Has the Committee been provided  
27 with those materials?

28 MR. NOYES: Yes, they have.

0079

01 SENATOR MORROW: Mr. Drivon.

02 MR. DRIVON: The surveys that you do, do they  
03 also from time to time include telephone conversations with  
04 energy marketers or generators outside of the utility community?

05 MR. NOYES: No, sir. No, this would just be  
06 utilities.

07 SENATOR MORROW: Same letter. It states also  
08 right after that, "Wholesale traders are then given price and  
09 quantity guidelines and then given the discretion to sell either  
10 on the open market or the PX."

11 First of all, the guidelines that are referred to  
12 there, what are these guidelines?

13 MR. NOYES: Once they have surveyed the industry,  
14 then they have a feel for whether they should be buying or  
15 selling. And our -- their supervisors would look at that data  
16 and say, okay, we should be buying today, and we can buy this  
17 much without creating a system problem for ourselves. If we buy  
18 too much, then we'd have back down our own generation.

19 On the other hand, they would look at what our  
20 expected load was for the day and the resources that were on and  
21 make a determination of what we could sell, and they would  
22 provide these guidelines to them, that they could sell this many  
23 megawatts.

24 SENATOR MORROW: Senator Bowen.

25 SENATOR BOWEN: I'm actually slightly confused by  
26 that description.

27 The letter says that "LADWP determines the amount  
28 of capacity and energy that can be offered on day ahead and real

0080

01 time basis," but you're suggesting that that analysis is used to  
02 determine whether you're going to buy or sell, which means that  
03 it isn't just capacity and energy that determines whether you're  
04 buying or selling.

05 MR. NOYES: I'm not sure what it is in there that  
06 -- I'm not totally following your thoughts there.

07 SENATOR BOWEN: If you're just basing your  
08 decision whether to offer to the wholesale market on how much  
09 energy or capacity you have, you're not engaging in an analysis  
10 of whether you should be buying or selling. You're only  
11 deciding whether you're going to use everything you have, or  
12 whether you're going to sell excess. That's the whole

13 discussion.  
 14 So, you're suggesting really something that's  
 15 slightly different than that.  
 16 MR. NOYES: Mr. Snyder pointed out that the word  
 17 says, "the amount of ... energy it can offer." Would be more  
 18 correct if it said, "the amount of energy that we can offer or  
 19 offer to purchase."  
 20 So, we would doing an analysis as to whether we  
 21 should be in a market to buy or in a market to sell.  
 22 SENATOR MORROW: Let me go back to the  
 23 guidelines. I mean, it says, "Wholesale traders are then given  
 24 price and quantity guidelines and then given discretion to sell  
 25 on the open market or the PX."  
 26 Again the guidelines. Are we talking about  
 27 written guidelines? What are we talking about here?  
 28 MR. NOYES: No, just discussions. Once they have  
 0081 their prices, then the traders discuss this with the  
 02 supervisors, and they provide a plan for the day. And that plan  
 03 is in our market plans that have been submitted to the  
 04 Committee.  
 05 SENATOR MORROW: So the guidelines you're  
 06 referring to are in these market plans that we have?  
 07 MR. NOYES: The real time data or the market  
 08 forward plans.  
 09 SENATOR MORROW: Okay. So, there's no difference  
 10 between this, referring to the guidelines. That's basically the  
 11 same that you have in the real time daily forward and forward  
 12 market plans?  
 13 MR. NOYES: That's correct.  
 14 SENATOR BOWEN: Senator Morrow, if I might  
 15 follow-up.  
 16 Exhibit D is a document to real time marketing  
 17 personnel which says, "Effective immediately ALL energy sales  
 18 shall be priced at a minimum of \$250 per megawatt hour."  
 19 Is that a guideline?  
 20 MR. NOYES: I don't have a copy of that before me  
 21 to see.  
 22 SENATOR MORROW: You're going to get one here.  
 23 Ms. Bowen got ahead of me, but that's fine.  
 24 SENATOR BOWEN: Sorry.  
 25 MR. THARP: I believe it is a guideline, yes.  
 26 SENATOR BOWEN: I don't have the other  
 27 confidential documents, so I don't know whether there are  
 28 subsequent -- let me, since I got ahead of the Chair, who has  
 0082 seen all the documents, let me return the floor to the Chair,  
 02 who also has a better voice than I do today.  
 03 SENATOR MORROW: Thank you, Ms. Bowen. I'll come  
 04 back to that in a little bit here.  
 05 Let me go back to your letter. On Page 2, and  
 06 still within the same response to Question 1, you indicate,  
 07 reading, "We do not analyze load or generation capability  
 08 outside our system."  
 09 Do you have that?  
 10 MR. NOYES: Yes.  
 11 SENATOR MORROW: Your employees, are they aware,  
 12 your personnel, are they aware of load and generation  
 13 capabilities outside of your system?  
 14 MR. NOYES: Being in the industry, they would  
 15 have a general awareness, but they don't have an awareness on a  
 16 day-to-day basis. They're not discussing this with other  
 17 utilities.  
 18 MR. SNYDER: Senator Morrow, we're happy to

19 cooperate.

20 We came here for compliance of documents. I  
21 think this is getting a little beyond that.

22 If you'd like sometime in the future, I'd be  
23 happy to come back with Mark Ward, who's in charge of the  
24 traders, or Mike Webster.

25 SENATOR MORROW: I can assure you, Mr. Snyder,  
26 the questions I'm asking are leading up to the production of  
27 documents.

28 MR. SNYDER: Okay.

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01 SENATOR MORROW: I'm trying to find out who might  
02 have certain information, and then we can determine whether or  
03 not e-mails, and reports, and the like, are made. I'm trying to  
04 find out, is there someone responsible.

05 For instance, I understand that Cal ISO, they  
06 have a web site in which they provide both load and generation  
07 capabilities, information, and data. I know PIRA, for one, and  
08 I think your company, your utility, has a contract that provides  
09 certain information.

10 My question is this. Do you have somebody with  
11 DWP that's tasked with the responsibility of being up with that  
12 information?

13 MR. NOYES: I don't know if anybody monitors  
14 that, but it's not a part of determining what we have available  
15 to go on the market.

16 To go a market is solely done on analysis within  
17 our system, that we would determine what we need for our system,  
18 and determine what might be excess to our system. And that's  
19 how they would determine what was available.

20 They don't do it by analyzing somebody else's  
21 system, or analyzing the state, or analyzing transmission  
22 congestion, or anything like that. They just analyze our  
23 system.

24 SENATOR MORROW: Well, you receive information as  
25 to load and generation capabilities from outside resources.  
26 There are people that keep up on that; right?

27 MR. NOYES: I believe so, but I think once you  
28 get to this detail, I think these are questions that would have

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01 to be addressed to somebody who is more personally involved.

02 SENATOR MORROW: I'm just trying to find out if  
03 there's somebody that is involved in obtaining that kind of  
04 information, then my next question will be, what do you do with  
05 it? And how do you provide that information, if you do, to  
06 other employees?

07 I'm looking to see if whether or not that type of  
08 information is communicated, I don't care by e-mail, by internal  
09 memo, reports, whatever it might be. That's the direction of my  
10 question.

11 MR. NOYES: This question was posed to our  
12 traders and asked, how do you do your analysis, and provide  
13 everything that you do to provide your analysis. And they  
14 provided everything that they use to come up with their numbers,  
15 and these were provided to you in these day forward plans and  
16 forward marketing plans.

17 SENATOR MORROW: I guess the question is, were  
18 they provided to us completely in the four boxes that we  
19 received?

20 MR. NOYES: I think originally, your staff  
21 examined them and found out that we missed a few days, and came  
22 back to us with those days that we missed. And we went back  
23 through our records, and most of them were weekends where we  
24 didn't do this type of analysis. There may have been few days

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25 that we found that we had missed, and we supplied those.  
26 SENATOR MORROW: Mr. Chavez.  
27 MR. CHAVEZ: From the documents we've reviewed  
28 thus far, we have your forward plans, your real time plans, and  
0085 another one that you mention in your letter.  
01 I'm curious. They're devoid of any other  
02 supporting data, backup data, e-mails.  
03 Do those traders talk with one another? Do they  
04 communicate via e-mail, or is just purely an oral communication  
05 of what's going to occur, and then they go in and then start to  
06 make the computations, enter the data?  
07 Do they not interact at all through e-mails, and  
08 wouldn't that interaction through e-mail be, perhaps, responsive  
09 to the subpoena?  
10 MR. NOYES: They're right there in the same room,  
11 and they discuss things orally.  
12 I asked for copies of e-mails; there were none.  
13 They said they handle everything just as I described.  
14 MR. CHAVEZ: How about interaction with other  
15 areas? They must interact with their -- just generally  
16 speaking, how is your market analysis department broken up?  
17 Price forecasting, load forecasting, and production and  
18 planning; correct? These people all reside within the same  
19 area?  
20 MR. NOYES: In the same basic area, yes.  
21 MR. CHAVEZ: Same area, within talking range.  
22 So, from me to you, maybe cordoned off by cubicles?  
23 MR. NOYES: There's a security analysis that  
24 would be on done a separate group on a separate floor. They  
25 would determine certain system security issues, and then turn  
26 this over to our traders, who would then analyze the system,  
27 determine which unit's on, do unit commitment. And they were  
0086 the people who would develop these daily forward plans and  
01 forward marketing plans and determine what's available.  
02 Those people are all right there together in the  
03 same room. They don't have to consult back with the system  
04 security people.  
05 SENATOR MORROW: Mr. Drivon, you had a question.  
06 MR. DRIVON: Does LADWP now have or have they had  
07 in the past a market surveillance group or committee?  
08 MR. NOYES: I'm not aware of any such committee.  
09 MR. DRIVON: Thank you.  
10 SENATOR MORROW: Moving on, again, in the letter  
11 that we're referencing, your response to Question 2, if I can  
12 move to that one.  
13 Do you have that?  
14 MR. NOYES: I do.  
15 SENATOR MORROW: Your response to Question 2  
16 states, "We do not analyze congestion in the Cal ISO  
17 transmission system."  
18 Since you do not analyze transmission congestion,  
19 do you have access to information, data, reports that conduct  
20 that type of analysis for you with regard to transmission  
21 congestion?  
22 MR. NOYES: We do not gather any information on  
23 the external transmission outside of our own. Our analysis is  
24 confined to our own system.  
25 SENATOR MORROW: Does DWP have a contract or  
26 relationship with PIRA Energy Group?  
27 MR. NOYES: I'm sorry, what was the name again?  
0087  
01 SENATOR MORROW: PIRA, P-I-R-A. I'm not sure

02 what the acronym is. I've always referred to it as PIRA.  
03 MR. THARP: I believe that's a subscription  
04 service, right, where they print a monthly newsletter?  
05 SENATOR MORROW: I'm asking you. I believe that  
06 is the case.  
07 MR. THARP: I know they receive that.  
08 SENATOR MORROW: DWP receives that subscription  
09 service.  
10 I'm informed that with that subscription service,  
11 that PIRA provides reports that estimate supply and demand.  
12 They also estimate transmission utilization, especially during  
13 the seasons when congestion might be expected. That's according  
14 to your own letter that you produced.  
15 So apparently, you folks do receive information  
16 analyzing congestion on the transmission system, right?  
17 MR. NOYES: We may receive documents that have  
18 some analysis, but we do not analyze the external transmission  
19 system. It's not part of our wholesale marketing plan. It's  
20 not information that's used to determine what's available. It's  
21 not information that's used to determine prices.  
22 SENATOR MORROW: Is there anyone, employee or  
23 group, that has a responsibility of acquiring that information  
24 from PIRA or elsewhere?  
25 MR. NOYES: I do not know who uses the PIRA  
26 report.  
27 SENATOR MORROW: See, there's a difference  
28 between "I don't know," and "No, there's not." That's something  
0088 I'm looking for an answer to.  
02 MR. SNYDER: Your question is responsibility.  
03 Can you answer that?  
04 MR. NOYES: We don't have anybody who's  
05 responsible for assessing the external transmission system from  
06 a PIRA report or any other mechanism.  
07 SENATOR MORROW: I'm an attorney, and I can slice  
08 slice words, too.  
09 Does anybody in DWP perform that function,  
10 whether they're responsible to or not?  
11 MR. NOYES: No, they don't.  
12 SENATOR MORROW: Okay.  
13 Mr. Drivon.  
14 MR. DRIVON: Who is Jeff Peltola?  
15 MR. NOYES: Jeff Peltola is our budget officer in  
16 our financial services organization.  
17 MR. DRIVON: You had a Trade and Risk Review  
18 Committee; is that correct?  
19 MR. NOYES: I'm not sure if you're referring to  
20 our Energy Risk Policy Committee?  
21 MR. DRIVON: No. I have here a document. It  
22 says, "Trade and Risk Review Committee Meeting Minutes."  
23 SENATOR MORROW: That'll be referred to as  
24 Exhibit A, I think, in the package that you have.  
25 MR. NOYES: There was a -- the answer is no, that  
26 does not exist. There was some discussion about establishing an  
27 Energy Risk Policy and Trade Committee, but it was never  
28 established on a formal basis, and there were no meetings, and  
0089 there were no minutes taken.  
02 MR. DRIVON: Well, Exhibit A says that it's  
03 meeting minutes of a meeting of that committee for Wednesday,  
04 November the 1st of 2000.  
05 MR. SNYDER: He's looking at the document.  
06 MR. NOYES: I see the minutes. What was your  
07 question?

08 MR. DRIVON: Well, you told us that you do not  
 09 analyze congestion in the CAISO transmission system; correct?  
 10 MR. NOYES: That's correct.  
 11 MR. DRIVON: Look at Page 2 of the document,  
 12 bullet point 7. It says, "Peltola to review congestion  
 13 situations to see if some paths could be re-priced."  
 14 Do you have documentation as to what his review  
 15 of such congestion situations might have disclosed?  
 16 MR. NOYES: Any discussion of paths would have  
 17 been on our own system, whether we should -- how we should price  
 18 transmission paths on our own system.  
 19 I did not ask that question to him, since it was  
 20 on our own system. I don't know if he has --  
 21 MR. DRIVON: So, when it says, "Discussion of how  
 22 an average tariff price is derived and applied to all paths ...  
 23 some paths have more value than others," you're talking about  
 24 all of your paths?  
 25 MR. NOYES: On the DWP system.  
 26 MR. DRIVON: Would there be documentation as to  
 27 what the congestion situations would be? Documentation of what  
 28 his review showed?  
 0090  
 01 MR. NOYES: On the DWP system?  
 02 MR. DRIVON: Yes.  
 03 MR. NOYES: I don't know. That wasn't something  
 04 that was asked, and I didn't ask about our internal system.  
 05 MR. DRIVON: The next question is, do you know  
 06 whether or not there were other regular meetings of the Trade  
 07 and Risk Review Committee, other than the one on November the  
 08 1st of 2000?  
 09 MR. NOYES: No, I don't. I had just called back  
 10 prior to this meeting, and that's where I was told that no, that  
 11 committee hadn't been formally established. So no, I don't know  
 12 the answer to that.  
 13 SENATOR MORROW: Let me jump in here.  
 14 The Trade and Risk Review Committee has not been  
 15 formally established. I'm not sure what is meant by "formally  
 16 established." Maybe you can clarify?  
 17 MR. NOYES: My understanding is that what they  
 18 had -- that there was some discussion of a need for such a  
 19 program, to establish such a committee, but it had never really  
 20 been established.  
 21 SENATOR MORROW: This document, Exhibit A, is  
 22 this a figment of our imagination? You produced it. It says,  
 23 "Trade and Risk Review Committee Meeting Minutes," and met on  
 24 November 1st, 2000.  
 25 Are these informal minutes? Was this an informal  
 26 meeting?  
 27 MR. NOYES: Well, I had called back and gotten  
 28 information that seems to be inconsistent with this, and it's  
 0091  
 01 taken me by surprise. I don't know. I'll be glad to check that  
 02 and get back to you.  
 03 SENATOR MORROW: And I appreciate that.  
 04 Look, I will voice to you my concern. We  
 05 requested, of course, that the person or persons most  
 06 knowledgeable with respect to compliance would be present to  
 07 testify here. We're asking a lot of questions here and getting  
 08 a lot of blank looks. And statements were made, and then we  
 09 have documents here that seem to refute or are entirely  
 10 inconsistent with that.  
 11 I'm not saying anything against you gentlemen,  
 12 but you may or may not be in the capacity where you can answer  
 13 the types of questions that we have. If that's the case, we



14 need to know that so you can determine who that person is and  
15 bring them before the Committee, or get the information that  
16 we're requesting.

17 MR. SNYDER: We'd be happy to get you whoever  
18 would be best appropriate.

19 Actually, when I got the letter, the letter just  
20 asked that counsel appear. And I thought, in abundance of  
21 caution, I would bring Mr. Tharp, who had the correspondence,  
22 and his fellow engineer who'd gathered the documents.

23 But all it says here is that counsel are supposed  
24 to appear.

25 And I have to tell you, I'm not that familiar  
26 with your procedures. I do have a copy of the letter here, if  
27 you'd like to see it.

28 SENATOR MORROW: You're certainly aware, though,

0092  
01 that the issue would be whether or not, and to what extent, DWP  
02 had complied with our subpoenas.

03 MR. SNYDER: That's why I brought these two  
04 people, the person who had the correspondence, and the person  
05 who gathered the documents. If you need additional people,  
06 we're happy to bring additional people.

07 Quite frankly, it just said counsel, and I made  
08 sure to have these people here. I'm happy to bring more people.

09 SENATOR MORROW: You'll have to determine that.  
10 I'm looking for the people who can answer the questions. I'm  
11 not sure that we have that here, at least, we're not getting the  
12 answers that we're asking.

13 Let me go further. Let's go to the response to  
14 Question Number 4 on the letter. This is in response to my  
15 letter. Do you have that?

16 MR. NOYES: I do.

17 SENATOR MORROW: Question Number 4, your response  
18 states, "We have no reports that separate out-of-market  
19 transactions from other wholesale transactions."

20 Do you have see that? That's an accurate  
21 description of what it says; correct?

22 MR. NOYES: That's correct.

23 SENATOR MORROW: Are those transactions, are they  
24 separated in any other documents by DWP?

25 MR. NOYES: I'm not aware of any other documents,  
26 but they're all included in the CD that we provided you, with  
27 all of our transactions.

28 SENATOR MORROW: Did you ever separate

0093  
01 out-of-market transactions prior to January 2001?

02 MR. NOYES: No, we haven't.

03 SENATOR MORROW: This document that Mr. Chavez is  
04 handing you is a document that you submitted. It's marked for  
05 purposes of my immediate identification as Exhibit C. If you  
06 want to take a moment just to familiarize yourself with that.

07 It is a power system daily update, wholesale  
08 marketing section, a recap for Thursday, December 7th, 2000.

09 And I could be wrong, but when I go down there,  
10 well, it's all over the document, it seems to separate out real  
11 time out-of-market sales to the ISO for hour ending 700, 600  
12 megawatts at \$700 per megawatt. It seems to separate them out.

13 Am I wrong?

14 MR. NOYES: It's separated out on a daily report,  
15 and we provided all the daily reports and have this information.  
16 I think that's what we said, that we have copies of all of our  
17 transactions that we've provided, but we don't have reports that  
18 pull this all together and separate were we can just provide the  
19 out-of-market.

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20 SENATOR MORROW: I mean, I heard you say a minute  
21 ago that no, you didn't separate them out prior to January 2001.

22 MR. NOYES: This is a daily report. And I guess  
23 maybe I misunderstood you, but if you pulled it out and  
24 separated on a daily report, and it happens to be on a line  
25 item, that isn't what I was thinking.

26 I was thinking, is there a report someplace that  
27 accumulated all the out-of-market transactions for a period of  
28 time prior to January 1st. I'm not aware of any such document.

0094

01 CHAIRMAN MORROW: This is a document generated by  
02 DWP?

03 MR. NOYES: Yes.

04 SENATOR MORROW: Mr. Chavez.

05 MR. CHAVEZ: I have a question.

06 In late January 2001, you stopped separating the  
07 OOM transactions from your daily reports as well. According to  
08 your correspondence, in 2001 you no longer separate, you no  
09 longer include OOM transactions as separate transactions, but  
10 it's all real time? Is that correct?

11 MR. NOYES: I don't know. I think you need --  
12 you'd have to address that to --

13 MR. CHAVEZ: It's referenced in the letter, so in  
14 2001, it says -- let me get the letter for you. It is your  
15 answer to Question 4, "... no reports that separate OOM  
16 transactions from other wholesale transactions. The details for  
17 the OOM transactions were included on the CD provided for Item  
18 3."

19 We've received that CD for Item 3. The question  
20 is, previously in these reports, prior to January 2000, you  
21 separated them out on these reports. But after 2001, looking  
22 through your reports, roughly around January 19th or 20th, you  
23 stopped separating them, and they were included in real time.

24 Now, my question is, who made that decision, if  
25 you have to reference that decision? We're looking for the  
26 notes and e-mail discussions, any relevant discussions that  
27 suggest why you changed that policy. Was it an actual policy?  
28 Was it just one day that somebody said, "You know what? Let's

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01 take that out. We don't need that any more."

02 Or, was there a communication that suggested that  
03 they wanted to take that out because of some new methodology  
04 that you were going to use? We're looking for the documents  
05 that represent that.

06 MR. NOYES: I don't know how that decision was  
07 made. We'll have to check into that and get back to you.

08 SENATOR MORROW: Any other questions?

09 Let's move on. I'll direct your attention to  
10 Question Number 7.

11 Your response, do you have that on your letter  
12 we're talking about?

13 MR. NOYES: I do.

14 SENATOR MORROW: Your response states, "The only  
15 agreement we have with California Department of Water Resources  
16 is associated with ownership rights and Castaic Power Plant  
17 entered into approximately 25 years ago."

18 I read that correctly; right?

19 MR. NOYES: Yes.

20 SENATOR MORROW: That response really doesn't  
21 adequately respond to the subpoena, nor does it answer my  
22 question first posed in the February 7th letter. I want to  
23 refresh your recollection.

24 The original document subpoena request asked for  
25 copies of all long-term contracts for the purchase of

26 electricity with your affiliates, California utilities  
27 affiliates, California utilities, marketers, traders and  
28 schedulers that are not your affiliates, the Department of Water

0096  
01 Resources, and direct sales to customers.

02 It also included requests to include an  
03 explanation of the percentage of total megawatts of your total  
04 net capacity that is committed to each of those contracts.

05 Your initial response, DWP, was that DWP had no  
06 wholesale contract rights to power that we resell on the open  
07 market. That comes from DWP's response letter, dated July 12th,  
08 2001.

09 In order inform clarify your response so I could  
10 understand, I clarified in my letter of February 7th, I stated  
11 that, "Our question was not limited to contract power which  
12 LADWP might have sold on the open market. It pertains to all  
13 power from all long-term contracts entered into by LADWP with  
14 any party. Does LADWP have contracted power? If so, where are  
15 those contracts?"

16 I mean, gentlemen, I just don't know how clear my  
17 question could have been made in that letter. And that brings  
18 me to the question, did LADWP have long-term contracts for  
19 purchased power?

20 MR. SNYDER: I'm going to try to help you on  
21 this, if I can.

22 If you're referring to any source that we have  
23 power to, I'm aware that at Palo Verde, we have participation  
24 agreements.

25 SENATOR MORROW: Look, I asked for all contracts.  
26 I did not merely ask about your contract with CDWR.

27 MR. SNYDER: No, no. What I'm trying to say, we  
28 have participation agreements where we are an owner in the  
0097 plant, or we're called a participant.

02 Now, in other circumstances, you may have a  
03 contract where you're actually purchasing power. If you're  
04 interested in our participation agreements, we have ownership  
05 interests in Mojave, in Navajo, in Palo Verde. We do have a  
06 contract with Intermountain Power, which I believe they could  
07 provide to you.

08 If you'd like participation agreements, we'd be  
09 happy to give you those also.

10 MR. NOYES: When I addressed this question, there  
11 were certain resources that we have that we consider ownership  
12 resources, and they're in our resource plan. And we provided  
13 that information to you in part of another question as owned  
14 resources. The same with Castaic.

15 I certainly would not have viewed Castaic, and  
16 going back to your original wording in Item 27 as a contract to  
17 purchase electricity. The reality is, we don't get any energy  
18 out of Castaic. All the energy that comes through Castaic goes  
19 back to the state.

20 Castaic is kind of like a checking account to  
21 you, where if you deposit money in your checking account, you  
22 have to right to write checks at a certain time, and you get  
23 money back. It's a convenient place to store your money.

24 That's what Castaic is to us. It's a convenient  
25 place to store our own energy until we need it. And then we  
26 allow the water to flow back down. But we don't get any energy.  
27 All we get out of that is the energy that we stored up there in  
28 the first place.

0098  
01 So, I never would have included --

02 SENATOR MORROW: Again, we're looking for

03 long-term contracts for power purchases.  
 04 Tell me, does DWP, do you purchase power from  
 05 Bonneville Power Administration?  
 06 MR. NOYES: Yes, we do.  
 07 SENATOR MORROW: Do you purchase power from the  
 08 Western Area Power Administration?  
 09 MR. NOYES: Yes.  
 10 SENATOR MORROW: Would those be pursuant to  
 11 long-term contracts?  
 12 MR. NOYES: No, they wouldn't.  
 13 Intermountain, we are participants in  
 14 Intermountain Power Project, and technically, that energy comes  
 15 to us through a participation agreement.  
 16 We'd be glad to provide Intermountain Power  
 17 Project contract. We'd be glad to provide any of these  
 18 contracts that you want. It's just a matter of interpretation.  
 19 These are -- nearly all of these are contracts  
 20 that have been in place for, in some cases, 30 years nothing.  
 21 And it's nothing in there that we felt was -- fit into the line  
 22 of this Committee, and wasn't something that we felt like you  
 23 were really after.  
 24 But we'll be glad to provide any of those  
 25 contracts, if you'd like.  
 26 MR. SNYDER: If I could add to that, for example,  
 27 at Palo Verde, these are ownership agreements. They're  
 28 participation agreements. They're not what you would think of  
 0099 as a power sales contract. We're not going out to buy X number  
 01 of megawatts. This our undivided ownership interest in that  
 02 plant pursuant to participation agreement.  
 03 If you want those, we're happy to give you the  
 04 participation agreements. But I think in the industry, they  
 05 wouldn't be considered as power contracts. A power contract  
 06 contract you'd think of would be to go out and buy 100 megawatts  
 07 for five years from someone.  
 08 At Palo Verde, and I haven't read it in a long  
 09 time, we have an actual certain share that we get out of that  
 10 plant. They call us a participant. I view us legally more as  
 11 an owner, but that's the wording they use.  
 12 But if you'd like those, we're happy to give  
 13 those to you.  
 14 SENATOR MORROW: I'm fine with that.  
 15 Mr. Chavez.  
 16 MR. CHAVEZ: Do you differentiate between  
 17 contract and agreement?  
 18 MR. NOYES: Not in answer to this.  
 19 MR. CHAVEZ: So, your agreement with WAPA falls  
 20 outside the scope of this particular category?  
 21 MR. NOYES: You mean with Hoover?  
 22 MR. CHAVEZ: Yes.  
 23 MR. NOYES: Yes.  
 24 MR. CHAVEZ: Or Bonneville Power.  
 25 MR. NOYES: Yes. Those -- Bonneville we don't  
 26 have any energy contracts at all.  
 27 With Hoover, yes, we do have what we consider to  
 28  
 0100 be ownership rights. But on a number like -- a number of our  
 01 resources, such as Mojave, and Navajo, and Palo Verde, and IPP,  
 02 and Castaic, and Hoover, there are contracts associated with  
 03 those. Those are what we consider our resources.  
 04 When Mr. Tharp told you earlier that we had 7,000  
 05 megawatts of resources, those were included in that. They  
 06 weren't something that we went out and purchased for that.  
 07 But if you'd like those contracts, we'll be glad  
 08

09 to provide them for you.  
10 MR. SNYDER: Do you want those contracts?  
11 SENATOR MORROW: Yes.  
12 MR. SNYDER: They're going to be quite  
13 voluminous.  
14 MR. DRIVON: Do you folks have any power swapping  
15 agreements?  
16 MR. NOYES: No.  
17 SENATOR MORROW: Let's move on.  
18 With regard to question 8 in the letter, your  
19 response. Do you have that?  
20 MR. NOYES: I do.  
21 SENATOR MORROW: It states that, "In December of  
22 2000 we began selling energy at cost plus 15 percent and in May  
23 2001 we began using cost-based pricing."  
24 First question is, how did DWP sell energy into  
25 the market prior to December 2000 in relation to the question?  
26 Was it cost plus 15 percent, cost-based, or exactly what was the  
27 formula, if you will?  
28 MR. NOYES: We used market-based rates.  
0101  
01 SENATOR MORROW: Let me go back. I think  
02 Ms. Bowen brought this up. It would be Exhibit D that you have,  
03 which is a document apparently from an R. Pentram, Mr. or Mrs.,  
04 to "ALL Real Time Marketing Personnel" regarding energy pricing:  
05 "Effective immediately ALL energy sales shall be priced at a  
06 minimum of \$250.00 per megawatt."  
07 Exhibit D as in delta.  
08 MR. NOYES: Yes, I see the exhibit.  
09 SENATOR MORROW: The \$250 per megawatt, obviously  
10 that's conclusory. I don't know what \$250 per megawatt means,  
11 if that was the market base? This was in August of 2000. If  
12 this is cost-plus 15 percent, or what?  
13 MR. NOYES: Would you need interpretation of  
14 these individual documents? I don't have that expertise. I  
15 think that's got to be addressed by somebody else.  
16 SENATOR MORROW: Here's what I'm more interested  
17 in. I mean, all I know is that effective August 16, 2000, sale  
18 prices would be a minimum of \$250 per megawatt.  
19 What I'm really interested in is how the decision  
20 was made, and what documents -- whether reports, memorandums,  
21 e-mails -- who made the decision?  
22 I mean, surely there are e-mails, notes, and  
23 memorandums discussing, and analyzing, and supporting the  
24 decision to go to a \$250 minimum pricing.  
25 Am I being unreasonable here? We don't have any  
26 documentation that's been produced thus far to reflect that.  
27 MR. NOYES: I'll have to check that specifically  
28 and see if we have something and provide you whatever we have.  
0102  
01 SENATOR MORROW: I raise this point for a  
02 particular reason. I think it gives a great example.  
03 This is conclusory, and, you know, it may well be  
04 that the \$250 per megawatt is cost-based, but it doesn't show  
05 that on the face of the document. And We're looking for  
06 evidence and documents that will explain these things pursuant  
07 to the questions that we've made. It's not enough. There's got  
08 to be some e-mails and more documentation concerning that.  
09 All right, who is Mr. or Mrs. Pentram?  
10 MR. THARP: It's a Mr. Robert Pentram.  
11 SENATOR MORROW: His job?  
12 MR. THARP: I think he's the supervisor in the  
13 trading group.  
14 SENATOR MORROW: Back to Question Number 10.

Senator Bowen.

SENATOR BOWEN: Senator Morrow, before you do that, on Question 8, if you don't mind, Question 8 deals with Document Category 43. I was interested in the LADWP response to Document Category 43, as well as 37, and 44, from the summary that's in the first LADWP tab in the Committee binder, which I believe is a quotation of the responses by LADWP.

The responses to Document Item 37, "All documents analyzing, discussing, or relating to the effect of the uniform price option on bidding strategies, arbitrage strategies or prices?"

"LADWP Index Response: None. We do not speculate."

Item 43, "All documents relating to bidding or

trading strategies ... in the wholesale market."

"LADWP Index Response: We do not have strategies."

Document Item I think it's 49, "All documents relating to marketing, strategic, risk management and portfolio management," et cetera, et cetera.

We have a number of places where the answer that we get is, we don't have strategies, or we don't speculate.

But when I look at the documents that have been provided, and I'm looking here specifically at Exhibit E in the material that's in the supplement to today's hearing, which are in the confidential documents, I find I have to question that.

And I think it really comes from a misunderstanding of the words "strategies" and "strategic."

From my viewpoint, I have a strategy for paying my mortgage on time every month. I have a strategy for determining what time session starts. And I have another and much less successful strategy for managing the assets in my 401-K Plan. They're not documented; I don't have any big plan for all of them, but they're nonetheless coping strategies for living in the world.

When I look at the documents in E, I find terminology such as "energy net revenue target," and "sales benchmarked versus PX net savings," which deal with the reduction of exposure of LADWP to PX spot market prices. And there's one statement in particular that says that the value is indicated in the graph in question, and is that "the wholesale marketing provides compared to just bidding into the day-ahead

PX spot market."

These kinds of statements make it fairly clear to me that there is indeed some strategy. There's reference to arbitrages. There's reference to net revenue targets, comparisons to a benchmark, which must indicate that somewhere, somebody is making an assessment of what the likely cost in the PX will be, and so forth.

So, I think that probably the Department needs to go back and use a much broader definition of the word "strategies," because I just think that the answer, "We do not have strategies," or with regard to arbitrage, "We do not speculate," the question wasn't "Give us documents about speculation." It was, "How do you deal with arbitrages?"

I just find it difficult to believe that there are no documents, e-mails, notes, anything that deal with how you get to a net revenue target, how you decide when to arbitrage, and so forth.

So, I would hope to secure your agreement to go back and look again at documents that fall into that category.

MR. NOYES: We did ask our people what they use,

21 and we do not do arbitrage.  
 22 SENATOR BOWEN: Then why are there charts in the  
 23 material that you provided to us that specifically reference  
 24 arbitrage transactions?  
 25 MR. SNYDER: Could you show us what you're  
 26 referring to, the page?  
 27 SENATOR BOWEN: I want to tread cautiously here  
 28 because these are materials that are provided confidentially.  
 0105  
 01 Let me just read you, for example, in a chart  
 02 entitled, and this is the last chart in the "LADWP Wholesale  
 03 Marketing" document that's labeled Exhibit E.  
 04 Under December, it says, "LADWP beat the PX by  
 05 about 50 percent due to a combination of reserve sales, day  
 06 ahead sales, and arbitraging between day ahead prices and the  
 07 real time prices."  
 08 So, "we don't arbitrage" is obviously not the  
 09 correct answer. This is the chart that demonstrates the  
 10 wholesale marketing, the value the wholesale marketing provides  
 11 compared to just bidding into the day ahead spot market. It  
 12 says, "The benefits are derived from a planned portfolio between  
 13 forward option and real time sales."  
 14 That, to me, has all the hallmarks of a strategy.  
 15 It's not just something that kind of just happens everyday.  
 16 MR. NOYES: I'll have to provide you with an  
 17 explanation on that. I don't have one now.  
 18 SENATOR BOWEN: On which part? Why it refers to  
 19 arbitraging?  
 20 MR. NOYES: Yes.  
 21 SENATOR BOWEN: What about the assertion that  
 22 there's a value to wholesale marketing above just bidding into  
 23 the PX? That suggests that somebody's actually looking to  
 24 determine which is better, executing some wholesale marketing  
 25 strategy, or plan, or just bidding into the PX.  
 26 MR. NOYES: I have not reviewed this document and  
 27 will have to get an answer for you.  
 28 SENATOR BOWEN: Okay. Same question with regard  
 0106  
 01 to a few charts back, there's one that says, "LADWP Wholesale  
 02 Marketing and Transmission Service Sales." And on the upper  
 03 right-hand side, it says, "Energy Net Revenue Target."  
 04 The sum of the documents here indicate to me that  
 05 there is some kind of plan. Maybe the word "strategy" should be  
 06 translated to "plan" or "mechanism," but some kind of means of  
 07 deciding when to conduct various kinds of sales so you're not  
 08 just putting on a blindfold and reaching into the kitchen  
 09 cabinet in the morning to decide whether you're going to have  
 10 cereal, or toast, or nothing.  
 11 It's some kind of coordinated decision-making  
 12 about what's going to happen. And I think we're looking for  
 13 documents that deal with how the Department goes about making  
 14 those decisions.  
 15 MR. NOYES: We'll provide a response to you.  
 16 SENATOR MORROW: Mr. Drivon.  
 17 MR. DRIVON: In particular, the meeting minutes  
 18 on this November the 1st, 2000 Trade and Risk Review Committee  
 19 indicate that LADWP Wholesale Marketing -- Benchmarking and  
 20 Performance Reports will be distributed by e-mail monthly.  
 21 Have we been provided those monthly e-mails with  
 22 respect to those reports? It's the second page, bullet point 9,  
 23 Exhibit A.  
 24 MR. NOYES: I don't recall specifically, but  
 25 we'll check and make sure you get them if you haven't gotten  
 26 them.

27 SENATOR MORROW: Thank you.  
 28 Let's go on. Again, I think it's the last  
 0107 question with respect to your response to my letter. I refer  
 01 your attention to Question 10 and your response. Your response  
 02 states, and it's actually the last sentence of that paragraph,  
 03 "The LADWP's Executive Energy Risk Policy Committee was never  
 04 formally established and did not have meetings in which minutes  
 05 were recorded."  
 06 I accurately read that; right?  
 07 MR. NOYES: Yes.  
 08 CHAIRMAN MORROW: I mean, is that your belief?  
 09 MR. NOYES: That's my belief.  
 10 SENATOR MORROW: You still hold to that.  
 11 Previously in response to our request, DWP  
 12 provided Executive Energy Risk Policy Committee minutes for  
 13 three dates at least: January 10th, 2000; July 6th, 2000; and  
 14 July 12th, 2001.  
 15 We've only showed you one, and that was a  
 16 different committee, but I'm representing to you, if you want us  
 17 to dig them up, I will, but they are minutes of what is labeled  
 18 as the Executive Energy Risk Policy Committee for those three  
 19 dates.  
 20 My bigger question is, you're stating that  
 21 there's no minutes. We found that there are three minutes.  
 22 What else is out there?  
 23 I don't know how often this particular committee  
 24 met, and when minutes were generated, but it's more than what's  
 25 being represented at least in response to my letter here.  
 26 Am I wrong?  
 27 MR. NOYES: No, and we will check to see if there  
 0108 are other minutes and provide them.  
 01 SENATOR MORROW: Let's go to Document Item 47,  
 02 and move off my letter.  
 03 For the benefit of others here, Item 47 asks for  
 04 copies of all minutes, meetings relating to risk management of  
 05 your trading activities and positions, both financial and  
 06 physical, in the California markets for electricity and  
 07 ancillary services and the California natural gas markets.  
 08 We provided one instance where you were given --  
 09 well, let me just tell you. In your next to the latest  
 10 submission, DWP provided the following minutes: The minutes for  
 11 the Trade and Risk Review Committee for the dates of July 13th,  
 12 2000 and November 1st, 2000. The Executive Energy Risk Policy  
 13 Committee -- I've already indicated that -- July 12, 2001 and  
 14 July 6th and January 10th of 2000. And you also provided  
 15 minutes for the Ad Hoc Energy Risk Policy Committee, whatever  
 16 that is.  
 17 Let me first go to the Trade and Risk Review  
 18 Committee. What is that committee, and when was it first  
 19 created?  
 20 MR. NOYES: I don't have those answers. I don't  
 21 know the function of that committee or when it was first  
 22 committed.  
 23 We'll get that information for you.  
 24 SENATOR MORROW: I would appreciate it.  
 25 I'm not sure if I asked about the Executive  
 26 Energy Risk Policy in terms of how often it meets, and when was  
 27 it created? Do you know?  
 0109 MR. NOYES: No, I don't know.  
 01 SENATOR MORROW: How about the Ad Hoc Energy Risk  
 02 Policy Committee?  
 03



03-04-02.TXT

04 MR. NOYES: No, I don't know.

05 SENATOR MORROW: Nobody knows.

06 MR. DRIVON: In terms of giving you some  
07 guidance, apparently the Trade and Risk Review Committee met  
08 monthly up until November of 2000, and thereafter quarterly.  
09 The intervening periods were covered by a monthly conference  
10 call as a substitute for the meeting.

11 That may give you some guidance in terms of what  
12 you should be able to find concerning the activities of that  
13 committee.

14 MR. NOYES: Thank you.

15 SENATOR MORROW: Any further questions from  
16 Members of the Committee or staff?

17 Let me just state this. I have a lot of  
18 questions left for DWP. It's perfectly clear to me -- again,  
19 I'm not taking anything away from you gentlemen. I'm sure that  
20 you're very intelligent, very qualified people.

21 But the people that are before this Committee  
22 today are not the people that are responding to the questions  
23 dealing with the degree of compliance to our document requests.

24 I'm not going to waste the Committee's time any  
25 further as far as propounding questions of this nature. I think  
26 you've got a lot of homework to go back on, and my staff and  
27 myself are certainly available to work with DWP to ensure that  
28 you do fully comply.

0110  
01 I want to remind you, you've had more than six  
02 months since the subpoenas went out, and nine months from the  
03 date of at least the informal request.

04 It's very clear to me that LADWP hasn't taken the  
05 purpose of this Committee and what we're trying to do seriously  
06 here, at least not as serious as the people that are working  
07 hard on these issues here on this Committee. Frankly, I don't  
08 appreciate it.

09 So with that, I'm going give Evelyn a break.  
10 We're going to have a ten-minute break, and we'll call for the  
11 next two remaining utilities.

12 Thank you, gentlemen.

13 [Thereupon a brief recess  
14 was taken.]

15 SENATOR MORROW: Thank you, ladies and gentlemen.  
16 Back on the record here.

17 We have two other municipal utility districts  
18 that we want to address. I don't think we'll take nearly the  
19 degree of time as the last two.

20 Gentlemen, if you would, identify yourselves.  
21 First, which one's Burbank, and which one's Glendale here? I  
22 want to know where the dividing line is.

23 MR. LINS: Good evening, Mr. Chairman, Members of  
24 the Committee. My name is Steve Lins, L-i-n-s. I'm with the  
25 City of Glendale.

26 SENATOR MORROW: So, Glendale's on the right;  
27 Burbank's on left here.

28 Why don't we do this. I'll go into some  
0111

01 prefatory remarks here in a moment. But the gentlemen who  
02 anticipate answering my questions, please rise. I'd like to  
03 swear you in.

04 [Thereupon FREDRIC FLETCHER,  
05 TERRY STEVENSON, JACK DOLAN,  
06 and STEVEN LINS swore to tell  
07 the truth, the whole truth,  
08 and nothing but the truth.]

09 SENATOR MORROW: Why don't we start with Burbank

first, the City of Burbank and Burbank Water and Power.

In response to the Committee's legislative subpoena, Burbank has established a repository in Sacramento at Gualco Group here, Jack Gualco. Thus far, DWP has submitted 9,300 documents in four boxes, and 1.2 gigabytes of electronic data on 5 CDs responsive to the Committee's subpoena. You've out-paced LADWP.

Further, according Burbank's November 21st letter, you're not claiming any privilege for any of the documents submitted.

Here today we have two people. I'll let you identify yourselves for the record.

MR. STEVENSON: I'm Terry Stevenson, Senior City Attorney for the City of Burbank.

MR. FLETCHER: I'm Fred Fletcher, Assistant General Manager of Power.

SENATOR MORROW: Gentlemen, first of all with respect to Burbank, give us a quick synopsis of what Burbank Water and Power is all about, the extent of its operations, how

big you are, and that sort of thing.

MR. STEVENSON: Thank you, Mr. Chairman. Good evening.

Burbank Water and Power is a municipal utility that's focused on the retail electric market. We serve 55,000 customers. Our average load is between 170 and 180 megawatts. The peak megawatts that we've ever achieved was in the summer of 1998, when we had 280 megawatts in one day.

We have resources of on site generation of approximately 200 megawatts. We have long-term power sale agreements with Bonneville Power and with Portland General Electric.

We also have ownership of resources through the Southern California public Power Authority, similar to Los Angeles, IPP in Palo Verde. And we also, obviously, make spot market power purchases.

BWP has been faced with the same issues as all load serving entities have faced in the last few years, and that is the increased cost of power on the wholesale electric market. And as a generator, we have also faced the problems of dealing with the cost of natural gas, and also the cost of increased compliance with AQMD requirements.

SENATOR MORROW: With respect to you folks, you previously explained, my contacts with staff, that Sempra Energy Trading, or SET, I guess it's called, they facilitate your wholesale trading, I understand. Therefore, I'd like to have some understanding of that relationship with respect to the document compliance requests that we have here.

Would you explain the nature of that relationship, the agreement that you have with SET?

MR. FLETCHER: That was an agreement we entered into in 1999 to give us some experience -- to take advantage of their experience because we had none in wholesale trading. In fact, the traders we got, we put onto that job, were former power plant operators who were taking night school and business management for their college degrees.

Sempra we got because of their expertise in helping us get on the market. They also had relationships with the Independent System Operator, which we never, nor do we have any way to bid into the PX. So, they helped facilitate those avenues with us.

There's also a Terms and Agreement that called for them to help us develop our risk management strategies.

16 Unfortunately, those were not -- they did not bear fruit. We  
 17 did not get those strategies. We talked to them a lot about  
 18 that, but we never did get them.  
 19 Eventually, the agreement between us and Sempra  
 20 fell into disuse.  
 21 MR. STEVENSON: And I actually believe at this  
 22 point it's expired.  
 23 SENATOR MORROW: When did that occur?  
 24 MR. FLETCHER: August 3rd, 2001.  
 25 SENATOR MORROW: Sometime ago, then.  
 26 At least up until August, what types of services  
 27 did they provide you? Let me ask, what type of services,  
 28 particularly what type of information or data would they provide  
 0114 to Burbank with respect to energy trading?  
 02 MR. FLETCHER: We would on a daily basis submit  
 03 to them power that we would have available beyond what we  
 04 projected for our needs that day. Generally speaking, it was  
 05 rather expensive power, because it was our old, inefficient  
 06 power plants that don't have pollution controls on them. And  
 07 so, that was generally what we had available, and those were  
 08 not, you know, very competitive. So, we didn't expect those to  
 09 go to market very often, but we did submit those to them for  
 10 them to sell.  
 11 And from time to time, the ISO or the PX would  
 12 buy it from them. Put those on the market, and they would  
 13 transact.  
 14 SENATOR MORROW: And did SET provide you with any  
 15 reports, analysis of the market, types of that nature?  
 16 MR. FLETCHER: No, they just transacted business.  
 17 SENATOR MORROW: You've heard me discuss this  
 18 with the two other utilities before, the subject of e-mails.  
 19 I think in your response, either your letter of  
 20 February 27th, responding to my letter of February 20th, you  
 21 indicated that Burbank traders send e-mails and spreadsheets,  
 22 attached a set, but that those e-mails were not retained by  
 23 Burbank; is that correct?  
 24 MR. STEVENSON: That is correct.  
 25 SENATOR MORROW: And that those are routinely  
 26 deleted from your computer system?  
 27 MR. STEVENSON: Yes. It's really more a capacity  
 28 issue. We simply just don't have the memory in our system to  
 0115 maintain things. What ends up happening is, they come off the  
 02 system -- come off the server on a fairly routine basis.  
 03 Otherwise, our system would just crash.  
 04 SENATOR MORROW: Is that a matter of policy, or  
 05 do you have an official e-mail retention policy at all?  
 06 MR. STEVENSON: I don't believe we have an  
 07 official e-mail retention policy. In fact, there has been  
 08 discussion about developing one, so I'm pretty sure we don't  
 09 have one.  
 10 And I think part of the problem is, the system we  
 11 have is simply not up to the nature it has to be if we're going  
 12 to keep any e-mails at all.  
 13 SENATOR MORROW: What is the system you have?  
 14 MR. FLETCHER: I'll explain what it is.  
 15 We use Microsoft Outlook. I'm the client. And  
 16 we use Exchange Server for the server. We run NT 4.0 for the  
 17 operating system, and we have a ether net network that ties it  
 18 together.  
 19 SENATOR MORROW: I saw you gentlemen sitting back  
 20 there during earlier discussion. I think Microsoft Outlook was  
 21 one of the e-mail programs, at least it's my understanding, that

22 even if an employee deleted the file, that it would go into a  
 23 more common receptical.  
 24 MR. FLETCHER: You mean the delete file?  
 25 SENATOR MORROW: Correct. He said it would still  
 26 go into --  
 27 MR. FLETCHER: There is also an option, you check  
 28 on that, that says whether you want to have it automatically  
 0116  
 01 delete the delete file when you shut the unit down. And we  
 02 always check that because it saves memory.  
 03 MR. STEVENSON: I do that likewise on my  
 04 computer. Mine's set so that every time I shut my computer off,  
 05 it just takes everything out that I've deleted.  
 06 SENATOR MORROW: And it goes where?  
 07 MR. STEVENSON: It goes over to the server.  
 08 MR. FLETCHER: Now, there is a way to go through  
 09 and try to find and recover that data. Two other ways.  
 10 One is that you could recover it through  
 11 fragments that might be available to the disk later on.  
 12 The other way you could find it is if systematic  
 13 backups are done to the network.  
 14 When you got the request for this, we did to the  
 15 IT to find out whether there were systematic backups that were  
 16 taken so that we might be able to recover some of these e-mails  
 17 with Semptra. They couldn't -- did not have any.  
 18 SENATOR MORROW: So, you've gone the extra miles  
 19 in trying to do that.  
 20 MR. FLETCHER: Yeah.  
 21 SENATOR MORROW: I understand in your response,  
 22 you requested SET, Semptra, to forward any e-mails that they  
 23 might have; is that correct?  
 24 MR. STEVENSON: Yes.  
 25 SENATOR MORROW: Have they responded back to you  
 26 yet?  
 27 MR. STEVENSON: They have responded. I recently  
 28 received some. I anticipate sending those up to you this week.  
 0117  
 01 Interestingly enough, when they actually came  
 02 through our law firm in D.C., and it took several attempts to  
 03 get them onto our system, our system kept rejecting them because  
 04 they were -- the volume was too great. So again, showing the  
 05 need to upgrade our system.  
 06 SENATOR MORROW: So, we can anticipate very  
 07 shortly some additional information with respect to e-mails.  
 08 MR. STEVENSON: Yes.  
 09 MR. DRIVON: How much quantity are you talking  
 10 about in terms of data?  
 11 MR. STEVENSON: I haven't had a chance to look at  
 12 them yet.  
 13 MR. FLETCHER: In excess of 2 megabytes.  
 14 MR. DRIVON: You mean 2 gigabytes?  
 15 MR. FLETCHER: No. Our server has got a filter  
 16 on it to stop e-mails over a certain size because it keeps -- we  
 17 don't want to have any individual mailbox at over 25 megabytes.  
 18 MR. DRIVON: You're talking about what Semptra  
 19 sent you --  
 20 MR. STEVENSON: It's not that much, and yet, our  
 21 system wouldn't take it. It took them several times to finally  
 22 get it through.  
 23 MR. FLETCHER: The e-mail server they have has a  
 24 very low, little small drive on it. It hasn't been upgraded for  
 25 several years.  
 26 In fact, we just upgraded the one over at Burbank  
 27 Water and Power last month, and as a result, we lost a lot of

28 data that we had -- it was quite expensive to recover.  
0118  
01 MR. DRIVON: I have a two-lawyer office. We have  
02 online storage of 185 gigabytes.  
03 MR. STEVENSON: Amazing that we don't have that  
04 much, isn't it?  
05 SENATOR MORROW: Well, we need to know.  
06 MR. FLETCHER: We share your concern about that.  
07 MR. STEVENSON: Believe me, we're somewhat  
08 frustrated at times with some of the things that happen on our  
09 system.  
10 SENATOR MORROW: Any further questions on e-mail?  
11 Let me quickly go to, again, a subject that I've  
12 discussed with the other utilities, audio recordings.  
13 Does Burbank retain any audio recordings of  
14 trader action?  
15 MR. FLETCHER: Yes, we do.  
16 SENATOR MORROW: Describe for me how you do that,  
17 what type of tape, and that sort of thing.  
18 MR. FLETCHER: We have a nice -- like I said, a  
19 very modern system. We just installed it a couple years ago.  
20 It's a digital system, and it's tied onto the lines that are on  
21 the operations desk, and it records all transactions, incoming  
22 and outgoing.  
23 If it's an outgoing call, it identifies the  
24 telephone number called, and the start time, and the duration.  
25 Unfortunately, it is a proprietary data storage method that the  
26 manufacturer uses so that it can attest that anything it records  
27 has not been doctored. You know, so it's got some methods that  
28 encrypt it in a way that a person wouldn't be able to, you know,  
0119  
01 falsify the recording.  
02 So, it is -- we can go through them. I think we  
03 sent you a list of all of the transactions.  
04 SENATOR MORROW: Right. You provided an index of  
05 recordings. The information is, 7 of the 13 categories, the  
06 number of channels, start date, start time, in time duration,  
07 and the like. I think it covers the entire period of the  
08 subpoena request, goes back, okay.  
09 Those are physically located where?  
10 MR. FLETCHER: They're located at our data center  
11 in Burbank near the Burbank Airport.  
12 SENATOR MORROW: So, you have it indexed such  
13 that if we needed to go to a particular conversation that  
14 occurred --  
15 MR. FLETCHER: Yes.  
16 SENATOR MORROW: -- you could readily go to the  
17 date.  
18 MR. FLETCHER: I've tried it myself, without any  
19 training, and it worked pretty good.  
20 SENATOR MORROW: Mr. Chavez.  
21 MR. CHAVEZ: Is that a PC-based computer frame?  
22 MR. FLETCHER: Yes, it is. It's a PC-based. I  
23 think it's Dictaphone or another company like that.  
24 MR. CHAVEZ: If we wanted to listen to those  
25 audio recordings, how can we get a copy? Do we have to come  
26 down.  
27 MR. FLETCHER: Coming down's probably the best,  
28 because then you get to work interactively with it and dig  
0120  
01 through it. But sans that, we could make a little cassette, but  
02 it would be kind of a jerry-rigged deal.  
03 We could put it onto, you know, a cassette  
04 recorder. We've got a little micro cassette thing that plugs

05 into a jack there.

06 SENATOR MORROW: Any other questions?

07 Actually, that's all I have for now. Appreciate  
08 your cooperation.

09 Let me switch gears. If you gentlemen want to  
10 leave, that's fine, but let me switch gears to the City of  
11 Glendale.

12 SENATOR BOWEN: Before they leave, I'm curious  
13 about the status of the materials that have been claimed to be  
14 privileged by Duke Energy Trading and Marketing.

15 Maybe, Mr. Drivon, you can help me out with it.  
16 It was interesting. There's a letter in the file to you,  
17 Senator Morrow, from the city attorney dealing with  
18 confidentiality.

19 MR. STEVENSON: That letter, I think Duke sent  
20 that out to everybody. So what I did is, when I received the  
21 letter, I just forwarded it on to put it in with our material  
22 just to kind of alert Scott that, when he went through the  
23 material at Jack Gualco's office, that they were asserting, you  
24 know, a certain amount of confidentiality to that.

25 I did not read that letter as preventing the  
26 Committee from reviewing it. I just wanted Scott to be aware  
27 that there was a heightened interest in Duke in not letting any  
28 of that information out.

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01 SENATOR BOWEN: All right. Thank you.

02 SENATOR MORROW: Thank you, gentlemen.

03 Glendale, last but definitely not least. In  
04 response to the Committee's subpoena, Glendale Water and Power  
05 has established a document repository also with the Gualco  
06 Group.

07 And since the issuance of the subpoena, Glendale  
08 has made three commission submissions to repository, totaling  
09 4,500 or two boxes of the documents and a Federal Express  
10 package. According to your November 26th letter, Glendale is  
11 claiming no privileges as to those materials.

12 Why don't I let you gentlemen introduce  
13 yourselves and your positions with Glendale.

14 MR. LINS: I'm Steve Lins, L-i-n-s. I'm an  
15 Assistant City Attorney with Glendale City Attorney's Office.  
16 I'm the attorney for Water and power, and I'm also involved in  
17 the Risk Management Committee that this Committee's been asking  
18 some questions about.

19 Just, if I could, slip a little bit into  
20 background on Glendale. We're very similar to Burbank. We're a  
21 municipal utility. We've got just 82,000 customers. Our  
22 average annual load is approximately 180 megawatts, but our peak  
23 all time record load is 315 megawatts. And on a perfect day  
24 with no AQMD restrictions and no outages, or curtailments, we've  
25 got 450 megawatts of available capacity, including about 250 on  
26 site in Glendale, and then outside contracts.

27 SENATOR MORROW: Thank you.

28 Yes, sir.

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01 MR. DOLAN: I'm Jack Dolan. I'm an energy  
02 marketer and trader for the City of Glendale. I'm mostly  
03 involved in term trades and, in general, in the overall  
04 marketing of wholesale operations.

05 SENATOR MORROW: I understand that similar to  
06 Burbank, you have a relationship with another party, Coral  
07 Energy. Basically, they do trading for you, I understand.

08 I'll let you describe the relationship that  
09 Glendale has with Coral.

10 MR. DOLAN: Coral Energy, we entered into a power

11 marketing alliance in August of 2000. Their role primarily is  
12 to help us with the intricacies of power marketing, help us with  
13 some risk management, but primarily to help us with what was  
14 becoming an overwhelming workload on a very small utility,  
15 almost like what Burbank did with Sempra.

16 SENATOR MORROW: What types of services do they  
17 provide for you, and what types of materials go back and forth  
18 between Glendale and Coral?

19 MR. DOLAN: As far as services, day to day, they  
20 do our ISO scheduling for us, and they do our gas bids into the  
21 gas nominations into the system for us.

22 We do some day-to-day trading of surplus  
23 wholesale energy. They help us to go out and find retail energy  
24 at a cheaper price, if it's lower than our generation costs.

25 We coordinate with them as to optimizing our  
26 system, which is their primary goal, is to help us optimize  
27 Glendale's native load.

28 On the term end of it, I will work with their

0123

01 term traders to look at potential transactions to accommodate or  
02 to try to optimize surplus resources on a term basis, monthly or  
03 quarterly, et cetera.

04 SENATOR MORROW: How long have you had the  
05 relationship with Coral?

06 MR. DOLAN: August of 2000.

07 SENATOR MORROW: And you still have that  
08 relationship?

09 MR. DOLAN: Yes. It's a five-year arrangement.

10 SENATOR MORROW: If I can ask, how were  
11 out-of-market transactions handled, if at all, beginning in  
12 January 2001?

13 MR. DOLAN: All of our transactions were handled  
14 in a similar fashion within and outside the ISO. Primarily we  
15 looked at things as a deal-by-deal basis. Again, very small  
16 utility. Our function primarily was to capture cheapest price  
17 for native load, but once we've done that, we would buy and sell  
18 on the wholesale market.

19 And Coral's main function was to, if it was  
20 within the ISO, to schedule ISO transactions on a daily basis  
21 for us, on our behalf, with Glendale's schedule coordinator ID.  
22 And for transactions outside of the ISO, where we would use our  
23 own transmission or resources outside of the ISO, they would  
24 help us determine the pricing, and that sort of thing.

25 SENATOR MORROW: Obviously, you have  
26 communication back and forth with Coral --

27 MR. DOLAN: Yeah.

28 SENATOR MORROW: -- on these things. I know you

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01 responded to the Committee's request, but I've got a few more  
02 questions on the subject of e-mail.

03 What's your status, if you will, with regard to  
04 your computer system and the retention of any e-mail, electronic  
05 documents that might be responsive to the Committee's request?

06 MR. LINS: The City doesn't have a formal e-mail  
07 retention policy. They do have kind of a computer use policy  
08 city-wide, City of Glendale Computer Use Policy, that does say  
09 that e-mails in the system are purged after 90 days.

10 Aside from that, individual staff members keep  
11 e-mails on a case-by-case basis, depending on whether or not  
12 they think it's worth keeping.

13 I did check with our IS Department, and there are  
14 backups. Even though the e-mails are purged after 90 days,  
15 there are regular backups of e-mails that are on the server  
16 in-box or the server delete box.

17 So, in other words, if an e-mail came in, and  
 18 even if someone deleted it, and it was still in their delete box  
 19 that night, it might get backed up. And then there's kind of a  
 20 sequence for how they keep those backup tapes. They'll do one  
 21 every night, and then one a week, and then I think they rotate  
 22 those. You know, they'll save four or five of those, and then  
 23 archive the fifth one. And you would keep that, I believe, for  
 24 up to a year.

25 We actually haven't gone back and -- in response  
 26 to your latest questions, I talked to IS, so we actually haven't  
 27 gone back and talked to them about, well, gee, can we go back  
 28 and see if we can find some of those. We're certainly willing

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01 to talk to them.

02 But also with respect to just e-mails that some  
 03 of the folks at GWP have retained, when we met with staff and  
 04 went over all the questions, we said, you know, we went over  
 05 each one and said, okay, do you have documents on this, this and  
 06 this? We didn't specifically focus on e-mails, so I think we'll  
 07 go back and make another attempt at that and say, look, we  
 08 really want to focus on e-mails here, and do you have some  
 09 e-mails on this issue and this issue?

10 I think when we got this request, I think frankly  
 11 staff was kind of overwhelmed with the 76 categories, and we  
 12 were kind of scrambling to get together what we could.

13 But we're certainly willing to go back.

14 SENATOR MORROW: Hopefully, a benefit from this  
 15 hearing is you know what we're looking at. Certainly it's the  
 16 Committee's view that if there are any e-mails or any items  
 17 contained electronically that are responsive and are retrievable  
 18 to the system at any point, even though they may be past the  
 19 immediate user on that, they need to be produced.

20 I'm hearing you're going to go back, and you're  
 21 going to come back with a response accordingly; is that correct?

22 MR. LINS: Yes. Just to clarify within  
 23 timeframes, I know some questions have timeframes, for example,  
 24 June 2000 to June 2001. Other questions say, you know, from the  
 25 time you first started, or if there's no timeframe, assume from  
 26 the time you first started selling into the ISO to the present,  
 27 which I think for us is April '98 to the date of the subpoena,  
 28 which was September 2001.

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01 I guess I just want to clarify that those are the  
 02 timeframes we should be looking at for these e-mails.

03 SENATOR MORROW: Okay.

04 One thing let me bring up, in your letter, I  
 05 think it's dated February 28th, you stated that, "We are not  
 06 sure if there are any e-mails discussing strategy."

07 It's probably an accurate statement. I'm also  
 08 hearing you haven't gone all the way back to see whether it's  
 09 retrievable, so there might be.

10 Obviously we're looking for any issues dealing  
 11 with the strategy in trading, and in risk management, and the  
 12 the like. Again, I'll just note that for now.

13 The audio recordings, does Glendale maintain any  
 14 audio recordings similar what you've heard.

15 MR. DOLAN: Yeah, we have a system that Fred  
 16 Fletcher from Burbank described fairly accurately. I'm not sure  
 17 it's the same manufacturer, but it's basically almost identical  
 18 to what he described. It's PC-based. It records a digital DAT  
 19 tape. We have those tapes on file. They are proprietary  
 20 system. We're more than willing let you come and listen to  
 21 them.

22

I'm not sure of the status of our indexing on



23 them. We did have a system crash. I can't remember how far  
24 back. Obviously, it didn't affect the tapes that we have, but  
25 it did affect the index. IS handles all that, so I'll have to  
26 go back with them and see if the indexing is still okay.  
27 If not, then we'll have to look at piecing this  
28 together for you.

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01 MR. LINS: Just one other issue we discussed when  
02 we heard your questions about what the system was.  
03 We're not sure if you can actually make copies of  
04 those that you guys can listen to without the system. So, we'll  
05 have to take a look at that and figure out.

06 Jack's understanding was that you needed this  
07 particular proprietary system to actually listen to the tapes,  
08 but we'll look into that for you.

09 MR. DOLAN: I'm sure there's some way of making  
10 that.

11 SENATOR MORROW: What period of time were these  
12 audio recordings --

13 MR. DOLAN: It covers the time period of the  
14 subpoena.

15 SENATOR MORROW: The entire period, okay. If you  
16 can let us know on that.

17 MR. LINS: Sure.

18 SENATOR MORROW: And cooperate. Obviously, the  
19 Committee's not going to go and listen to every single minute of  
20 every single hour or day.

21 MR. DOLAN: You're welcome to, if you want.

22 SENATOR MORROW: In LADWP's case, 26,000 hours of  
23 tapes.

24 But at times, a certain date can become very  
25 important. And what I'm hearing from you is, you have the  
26 capability by indexing to bring us right to that tape, and you'd  
27 make that available.

28  
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01 MR. DOLAN: Hopefully. If the indexing is still  
02 intact, and to be honest, we don't have much occasion to go back  
03 and listen to the tapes, so I'll have to go to IS and find out.  
04 But we'll chase that for you.

05 SENATOR MORROW: Any other questions?

06 MR. DRIVON: I have a couple.

07 You indicated that as generators, you made the  
08 considered gas costs, I think was the comment you made.

09 My question is whether or not there was any  
10 analysis done by you folks concerning the cost of natural gas,  
11 and particularly during the last quarter of 2000, the first  
12 quarter of 2001?

13 MR. DOLAN: Was there analysis done? To be  
14 honest, we were caught like a lot of utilities, a little  
15 unprepared for that. We had, for our own internal use, we had  
16 quite a bit of our gas portfolio was at index, which prior to  
17 that time wasn't a major consideration.

18 So no, we were caught a little unprepared there.

19 MR. DRIVON: Did you do any analysis with respect  
20 to what may have caused that problem?

21 MR. DOLAN: Market analysis? No, we were more  
22 reactive than pro-active, I'll be honest about it.

23 MR. LINS: We did produce, I just wanted to note,  
24 some monthly strategy meeting agendas and notes from Coral that  
25 they share with us on a monthly basis that looks at, you know,  
26 the next month. It says, gee, you know, what's the gas look  
27 like for the next month? It doesn't really analyze why the gas  
28 is going to be what it's going to be for the next month. It  
just looked at what do we think it's going to be for the next

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01 month, so we could kind of determine whether or not we were  
02 going to buy to generate, or buy power, or what.

03 MR. DRIVON: The other question is whether or not  
04 anybody from your organization attended any industry meetings,  
05 seminars, et cetera, that may have discussed those issues, and  
06 whether you maintained any documentation from such a meeting or  
07 gathering?

08 MR. DOLAN: We do attend the typical industry  
09 seminars -- not seminars, but gatherings, WSPP, management  
10 meetings, and that sort of thing. And obviously, those would  
11 have been topics of discussion at those meetings.

12 To my knowledge, we don't have any minutes or any  
13 data from that. I can go back and look to see if we have any.

14 MR. DRIVON: If there are any notes that were  
15 taken by anyone who attended those meetings, or program  
16 materials that may have been produced, or so forth, those could  
17 be of interest to us.

18 And I think you answered this question a moment  
19 ago, which was, as I understand it, you basically don't have any  
20 market monitoring or market surveillance committee or group  
21 established within your organization?

22 MR. LINS: I was just going to say, I guess it  
23 depends on what you mean by market monitoring.

24 We have an informal what's called a Risk  
25 Management Group. The primary function of that group is to  
26 focus on our native load, and trying to fix a reasonable price  
27 for our native load customers for next, you know, year to two  
28 years.

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01 Once again, it's kind of reactive to the market.  
02 I mean, we look forward and we say, okay, how much of our native  
03 load is -- how much of the price for our native load is locked  
04 in? We might have a goal to try and lock in 90 percent of the  
05 price for our native load for the next one to two years, so that  
06 if another one of these blowups happens, our native load's not  
07 going to be paying that higher price.

08 So, I'm not sure if that's what you're looking  
09 for or not. We do have that sort of -- I mean, it's market  
10 surveillance in the sense that we are looking at forward prices  
11 to determine, okay, are these prices such that, you know,  
12 they're reasonable enough for us to lock them in for the next  
13 year to two years? We are looking at forward prices.

14 MR. DRIVON: Was your organization one that was  
15 ever contacted by LADWP to discuss the issue of market prices?  
16 You probably heard their testimony earlier.

17 MR. DOLAN: Contacted to discuss the issue of  
18 market prices.

19 MR. DRIVON: Yes.

20 MR. DOLAN: We're in LADWP's control area, so we  
21 talk to them on a daily basis.

22 As far as discussing pricing, market pricing,  
23 typically our conversations with them revolve around, can we buy  
24 power from you, can you buy power from us, here's what our price  
25 is for X amount of term.

26 As far as more complex structures than that, we  
27 really don't have a very intricate working relationship with  
28 them on the marketing level.

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01 SENATOR MORROW: Would those types of questions  
02 or surveys go to you typically or Coral?

03 MR. DOLAN: For marketing questions?

04 SENATOR MORROW: Right. You heard LADWP making  
05 those types of surveys on the utilities, they said.

MR. DOLAN: I just want to make sure I understand the question.

If another utility sent a survey to us, is that what you're asking?

SENATOR MORROW: Well, no. Earlier, I don't know if you were present --

MR. DOLAN: Yes, I was.

SENATOR MORROW: LADWP said that what they do is, they conduct telephone surveys of all the utilities.

MR. DOLAN: Oh, I understand. No, that would be something that Coral would do as part of their general business. Again, that goes back to one of the driving forces for us establishing our relationship with Coral, was that they have a trading floor and they have this information that they gather daily for their own use.

SENATOR MORROW: So, if folks at Glendale received such a survey call from LADWP, would you refer that call to Coral?

MR. DOLAN: No, we would give them what we know. You know, what our costs are. If we had power for sale, we would tell them what we would sell power for, and that's the extent of it. Just as we would if anybody else called and asked for that type of information.

But we don't canvass and do that sort of -- we just don't have the manpower to do that.

SENATOR MORROW: Any other questions? Apparently not.

Thank you very much, gentlemen.

Before we officially adjourn, Evelyn asked me, and I want to make sure that everybody knows that the complete transcripts of all the Select Committee's hearings are available on my web site, and I promised to give you the web site. It's [www.sen.ca.gov/morrow](http://www.sen.ca.gov/morrow).

I want to thank Evelyn for her hard work in transcribing those and making those available. We'll get that transcript for today's hearing on the web site as soon as we can.

With that, again, gentlemen, thank you, ladies and gentlemen. This hearing is adjourned.

[Thereupon this portion of the Senate Select Committee hearing was terminated at approximately 6:15 P. M.]

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# CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the hearing of the Senate Select Committee to Investigate Price Manipulation of the Wholesale Energy Market was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way

12 interested in the outcome of said hearing.  
13 IN WITNESS WHEREOF, I have hereunto set my hand this  
14 \_\_\_\_\_ day of \_\_\_\_\_, 2002.  
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EVELYN J. MIZAK  
Shorthand Reporter